usan officials, in particular, expressed their concern that ethnic Belarusans who have lived in Latvia for many years would be frozen out of the citizenship process, and by extension, would not be able to own property. Ethnic Russians, the largest minority in Latvia, would also be adversely affected were this draft law—which still is at an early stage in the process—to be adopted.

Obviously, the process of building a new set of laws will be a slow and difficult one for many of the newly independent states of the former Soviet Union. Most of these states are either new members—or on their way to becoming members of the Commission on Security and Cooperation in Europe [CSCE]. Accordingly, I believe it important that as the new countries draft their citizenship laws, they respect the CSCE principles, especially with regard to equal rights for minorities. As member of CSCE, we have a responsibility to press them on this issue.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Is there further morning business? There being no further morning business, morning business is closed.

S. 12

CABLE TELEVISION CONSUMER PROTECTION ACT

The PRESIDENT pro tempore. The Senate will resume consideration of S. 12, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and so forth and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDENT pro tempore. The Senator from Hawaii [Mr. INOUYE].

Mr. INOUYE. Mr. President, I rise today in support of S. 12, the Cable Television Consumer Protection Act of 1991.

Mr. President, before I proceed with my remarks, I want to thank all of the Senators on the committee for all of their work on this legislation, particularly the author of this bill, Senator DANFORTH, and the chairman of our committee, Senator HOLLINGS. I also want to thank Senators FORD, GORE, GORTON, LIEBERMAN, and METZENBAUM for their contributions to the measure.

The bill we are considering today is very similar to S. 1880 which, as you recall, was approved by the Commerce Committee in June 1990 by a vote of 18 to 1.

The focus of this bill, S. 12, like S. 1880, is to address consumers' problems with rates and services while at the same time promoting competition. The 1984 Cable Act, which ironically was coauthored by the chairman of this committee, Mr. HOLLINGS—and I had the privilege of being one of the cosponsors—was designed to help promote competition in the video marketplace by relaxing many of the regulatory restrictions on the cable industry. It became known as the Cable Deregulation Act. This 1984 act has achieved many of its objectives.

Over the past 7 years, the cable industry has grown dramatically and today we find that most of America is wired to receive cable. Almost 90 percent of the homes in the country are covered by cable systems, and over 60 percent of these homes subscribe to cable service. System capacity has increased. The average cable system today offers about 36 channels and this number is steadily increasing.

So it is no longer the fledgling industry that existed in 1984. Programming choices have also grown significantly since the act was passed and today it is the dominant video distribution medium.

But I believe that the cable industry has begun to take advantage of its popularity. In certain instances, I most respectfully suggest that rate increases have been excessive and, for many systems, customer service has been abominable.

Programmers have argued that they cannot get carried on cable systems without relinquishing control of their product. In addition, competing video distributors allege that these programmers refuse to deal with them. In general, it appears that the cable industry now possesses undue market power which is used to the detriment of consumers, programmers, and competing video distributors. These concerns are addressed by this legislation.

As chairman of the Communications Subcommittee, I knew last Congress that we had to address these matters expeditiously, and I immediately began a series of hearings. In the last 3 years, my subcommittee held 13 hearings on cable-related issues. We listened to over 50 hours of testimony from 113 different witnesses. Out of this exhaustive examination, an overwhelming majority of the committee concluded that legislation was necessary to correct these problems.

These conclusions are reflected in the legislation we are considering today.

Incidentally, the bill passed the committee by a vote of 16 to 3.

This legislation has two goals: To promote competition in the video industry and to protect consumers from excessive rates and poor customer service where no competition exists. This legislation also addresses the concerns of consumers, programmers, and competitors about the market power of the cable industry. At the same time, it continues to permit the cable industry to grow and bring to the American public a new array of programming and other services. So, we believe this bill represents a balanced package.

For the record, let me now summarize the major provisions of the legislation.

On cable rates, S. 12 gives the FCC authority to regulate basic rates in the absence of effective competition. Effective competition is defined as the availability of a competitive multichannel video distributor to a majority of cable subscribers, and to which 15 percent have actually subscribed.

It requires the FCC to establish national guidelines and to ensure that any cities that choose to regulate basic rates do so only within the FCC guidelines.

Currently, the FCC is only empowered to regulate the basic tier of programming services. In an effort to circumvent legislation, many cable systems have retiered to move programming services out of the basic tier.

The basic tier is generally made up of those programs that many can get for free: ABC, NBC, CBS. At this moment, the cable industry does not pay for those programs.

But yet, you and I are charged for those programs. As noted in the Wall Street Journal, the edition of January 15, 1992, many cable systems have created tiers that only contain three broadcast signals and C-SPAN; three major networks and C-SPAN, four channels.

However, less than 10 percent of subscribers actually purchase this limited basic tier. Thus, if the only tier that is regulated is this limited basic, very few subscribers would be protected; 90 percent not protected.

To ensure that the regulation in this bill is meaningful, S. 12 requires that if less than 30 percent of the subscribers take the basic tier, the FCC's guidelines will apply to the next most popular tier to which 30 percent subscribe.

This we believe will ensure meaningful regulation of cable rates and cut off the cable industry's efforts to circumvent the intent of the bill.

In addition, S. 12 includes what could be called a "bad actor" provision.

This bill gives the FCC authority to regulate rates for tiers of programming other than basic, if it receives a complaint that makes a prima facie showing that a particular rate increase is unreasonable, and

This will give the FCC the authority to regulate in individual cases where cable operators impose excessive increases on subscribers.

Mr. President, I want to note that S. 12 does not permit regulation of programming services offered on a per-channel basis, such as HBO and Showtime.

The need for this provision and this legislation is bolstered by the July 1991 survey of cable television rates and services by the General Accounting Office.

This GAO report demonstrates that S. 12 is needed now more than ever.

Cable rates for the most popular basic cable tier of programming have increased 61 percent since deregulation went into effect in 1986, while the rates for the lowest priced tier increased by 56 percent.

During the same 4½-year period, the cost of consumer goods only rose by only 17.9 percent; 17.9 percent for the cost of consumer goods, and over 60 percent for cable.

This problem of excessive rate increases is not limited to one part of the country or to the major cities. Mr. President, it is happening all over the United States.

Just for the record, I would like to cite a few examples so we get a flavor of what I mean by rate increases.

Since 1986, cable rates have increased in Indianapolis, IN, 163 percent; in Kansas City, KA, 112 percent; in Portland, OR, 150 percent. This is while the cost of living went up 16.9 percent, and the cable rates went up 150 percent in Portland; in Shreveport, LA, 289 percent; in Bergenfield, NJ, 372 percent; in Cincinnati, OH, 152 percent, and in December of last year in this city, it went up another 43 percent.

Finally, Mr. President, in our own backyard, the backyard of Congress of the United States, Montgomery County, MD, rates have increased since 1986 by 1364 percent.

According to GAO, "The average monthly rates for the lowest priced basic cable service increased by 9 percent, from $15.95 to $17.34 per subscriber" from December 1989 to April 1991.

During this same period, one would assume that because of the hike in rates, the subscriber would receive more channels. That is a logical conclusion.

But the report shows that during that same period, the average number of channels offered on the lowest priced tier decreased by one channel: pay more but receive less.

Much has been made of the fact that this bill allows the FCC to regulate more than the basic tier.

But recent practices of the cable industry demonstrate that the consumer would not be protected if only the basic tier were regulated.

In fact, in many communities, consumers are paying more today for the basic tier and getting fewer channels than they received in 1986.

In my city, in Honolulu, my constituents paid $12 for 30 channels in 1986.

Today, they pay $12.95 not for 30 channels, but for 14 channels, less than half of what they received in 1986. On the island of Maui, consumers paid $11.56 for 34 channels in 1986. And today, they pay $14.95 for nine channels. They pay more for less than a third of what they had 5 years ago.

Mr. President, this is true in other parts of the country as well. In East Bay, CA, in 1986 consumers paid $9.95 for 26 channels. In 1991, they paid $20.40 for 21 channels.

In Naples, FL, in 1986 consumers paid $9.66 for 30 channels. Today, they pay $15.95 for 11 channels.

Mr. President, I could go on and on.

But on again I come back to our backyard, Montgomery County, subscribers receive one-fifth the number of channels they received in 1986 and pay over five times more.

This is a consumer bill. All of us here have at one time or another, in the last 6 months, made eloquent statements and speeches about how we must protect the consumer. Last evening, the President of the United States spoke eloquently on what he plans to do to protect the consumers of the United States, to give them a fair break.

The cable industry has recently been touting the availability of its new low-priced basic tiers. That has been advertised. Yet, when GAO employees posing as consumers called 17 of the systems with the new low-priced tiers, 8 of those systems did not even inform GAO of the existence of those tiers. They do not want consumers to buy those tiers. They do not make that much money.

The report also demonstrates that the FCC's June effective competition decision does not address the problem of runaway cable rates. The FCC ruled that effective competition exists when there are six over-the-air broadcast signals up from three. This will permit local authorities to regulate the rates for basic cable service when there are fewer than six over-the-air broadcast systems. According to the GAO report, under this definition, 80 percent of cable subscriber rates would not be subject to rate regulation.

Finally, Consumer Reports magazine recently found that cable rates have increased at a rate almost triple the rate of inflation since deregulation.

As a result, consumer satisfaction with cable is lower than any service industry. Any why has this occurred, Mr. President? I think the reason is rather obvious. It is cable's market power. An August 6, 1991, staff study released by the Department of Justice concluded that 50 percent of the cable rate increases since deregulation are a result of cable's market power. As a result, the bill, S. 12, also includes provisions to promote competition to cable and to reduce cable's market power.

Now let us turn to access to programming. The access to programming provisions in this bill are designed to encourage competition. I have been told by all of my colleagues at one time or another that competition is the essence of the free enterprise system. We are all for competition. But, Mr. President, you will hear speakers tell you that competition is not good for the consumer.

These provisions provide others with access to programming owned by cable operators. For mutichannel video distributors, it also prohibits these cable programmers from discriminating in the price, terms, and conditions. This is identical to the provision that was in S. 1880 last Congress. In addition, this provision prohibits cable operators from requiring a financial interest in programming as a condition of carriage and would ensure that satellite distributors of programming do not discriminate against home satellite dish owners.

By this I mean we have found that cable operators would tell a programmer, "You want to show your program on my company time? You may do so if you give us 51 percent interest in your company." If that is free enterprise, I do not want any part of it, Mr. President.

Let us get to retransmission consent. This has been a matter of some controversy, retransmission consent. These provisions give broadcasters the right to control the use of signals by cable operators. In addition, the bill retains what has been called a traditional must carry. Earlier this month, Mr. Jim Mooney, president of the National Cable Television Association, was quoted in Communications Daily as stating that the cable industry can live with either retransmission consent or must carry. This is precisely what this bill requires. Broadcasters—and I am speaking of local broadcasters, not NBC in New York or CBS in New York or ABC in New York; I am talking about channel 9 here, channel 4, or channel 7—these local network broadcasters must choose either to accept must carry on their local cable systems and waive their retransmission rights or to keep their retransmission rights and wave must carry.

On the issue of retransmission consent, I want to respond once again to the cable industry's campaign of misinformation about its effect on consumers' cable rates. The cable industry has attempted to mislead consumers through newspaper ads, bill stuffers, and advertisements on their systems. All of us have seen this. I have received these circulars in my bill. One fallacy they promote is that S. 12 will allow the TV networks to add a "20-percent surcharge to cable subscribers' bills." I hope that the NCTA will study the measure. Nothing could be further from the true intent and effect of S. 12. Mr. Mooney's admission that the cable industry can live with retransmission consent further demonstrates the disingenuous nature of these allegations.

Mr. President, we believe that the retransmission consent provisions of this bill are straightforward. They simply provide that when a local system forgoes the option of must carry protection, it may utilize its retransmission rights to negotiate with the local cable system over the terms and conditions of its carriage on the system. In other words, broadcasters will have the option of being treated like any other cable programmer. At this moment, cable operators negoti-

ate with cable programming services for the right to carry these program services. Gone are the days when the broadcasters received their revenues from advertisers and cable received their revenues solely from subscribers. Today, as we all know, cable competes with broadcasters for local and national advertising.

Cable has also asserted that retransmission will cause cable rates to increase. The GAO report states that the price per channel of programming for the lowest-priced tier increased 55 cents in the past year, and this lowest-priced tier is the tier of programming that contains over-the-air broadcast signals—ABC, NBC, CBS—which cable operators today receive for free. These cable companies are not paying for any of these signals. They just pluck them off the air. But when they retransmit to us, we pay for it. Thus, subscribers are paying an average of 58 cents per channel for broadcast programming that is free to cable. Cable does not have to pay for the production of these programs. They do not have to pay for the news format. They get it free.

The retransmission provisions of S. 12 will permit local stations, not national networks, as I have indicated, to control the use of their signals, and they do not contain any formula for retransmission fees or surcharges.

On the contrary, the committee report specifies that in its proceeding implementing retransmission consent, the FCC must ensure that local stations' retransmission rights will be implemented with due concern for any impact on cable subscribers' rates.

Mr. President, to eliminate any doubt on this issue, we will soon be offering a managers' amendment to the bill to make certain that retransmission consent does not result in rate increases. In addition, the FCC is also required to regulate the rates for the basic tier—this is the tier that contains the broadcast signals—to make certain that those rates remain reasonable. Thus, the FCC has a clear mandate to ensure that retransmission does not result in harmful rate increases that we have seen flourishing throughout this Nation.

Moreover, the bill is completely silent on what the negotiations between cable operators and broadcasters may entail. Mr. President, they may negotiate for money or for nonmonetary consideration, such as channel position. For example, those of us who have been using free television all our lives, we know that channel 4 is NBC, channel 5 is Metromedia, channel 7 is ABC, and channel 9 is CBS, but when you get on cable, it depends on the cable company.

And they can change it at will. Now that could be one of the items that the local broadcast company would like to negotiate. Maybe the NBC affiliate would say let us go back to our old number, channel 4 so no one will be confused. It could also involve joint advertising, promotional opportunities, and other forms of competition.

Finally, on this issue of retransmission, it has been asserted that S. 12 will impinge on the rights of program producers and that it conflicts with the cable compulsory license. Mr. President, that is not true. The committee report states "that nothing in this bill is intended to abrogate or alter existing program licensing agreements between broadcasters and program suppliers or to limit the terms of existing or future licensing agreements.

In other words, this provision in no way limits the rights of program producers to control the use of their product.

As to the effect on the compulsory licenses, it amends the Communications Act but it does not alter the Copyright Act or the applicability of the compulsory license. That matter comes with the jurisdiction of the Judiciary Committee, and it is my understanding that the Registrar of Copyrights, at the request of the Judiciary Committee, is reviewing the compulsory license and a report is due in February.

Mr. President, there has not been a comprehensive review of the cable compulsory license in many years, so I believe a review is long overdue and I wish at this time to commend Senator DECONCINI for initiating the process.

So in brief may I say that S. 12 will benefit all TV viewers whether they subscribe to cable or not by helping to restore a local television marketplace that functions competitively. Competition is good. It has not hurt free enterprise.

Instead of causing the blackout of television signals, it will eliminate the cable industry's present absolute power over the signals it provides or denies to its subscribers.

Instead of driving up rates as we have seen over the past 4½ years, S. 12 will ensure that the FCC or local governments maintain control over these rates in the absence of effective competition to local cable systems.

Mr. President, we all recognize that this measure is not without controversy. The cable industry and the administration oppose the bill. The cable industry obviously believes that the bill is not needed and it will argue that it will stifle the industry's growth.

The administration has also taken the position that we should permit the telephone companies to provide cable services as well as own and control programming.

The issue of telephone entry into cable is one that the committee is considering separately from this legislation. In fact, we are now in the process of holding a hearing on the bill submitted by Senator BURNS on this issue next month.

Telephone entry in many ways is much more controversial than this bill, and it may interest you to know, Mr. President, it is opposed by the cable industry.

Mr. President, before I close, I just want to note that in the last week, in the last few days, we have experienced a blitz by the cable industry seeking support for the so-called alternative or substitute. At this moment, Mr. President, none of us in the U.S. Senate have seen the text of this substitute and so we are at a loss as to how to argue for or against it.

This measure has been on the desk here since June of last year. We have given the ultimate maximum opportunity for one and all to study, choose, digest this measure and at the last moment, at the 11th hour, this alternative and substitute is up. However, we have been advised about some of the provisions that we should anticipate in this bill and what we know about it leads us to believe that it will do nothing to protect consumers.

On rate regulation it is our understanding that the substitute will allow the FCC to regulate the basic tier and defines that tier narrowly to include the local broadcast signals, C-SPAN I and II, and public access channels. That means that cable systems will not be subject to any effective regulation since many cable systems have already changed their programming offerings to create just such a broadcast tier.

According to the Wall Street Journal, when cable systems retier, often less than 10 percent of cable subscribers will actually take this tier. Thus the substitute would regulate a tier consumers do not want. Moreover, the bulk of the programming in this tier will be the broadcast signals, programming that is now available over the air for free.

Our bill, in contrast, will give the FCC the authority to protect consumers against excessive rates for the most popular tier of programming. And it is impossible for Congress to protect against all the creative ways that cable operators will find to avoid regulation. Therefore, it is imperative that the FCC have the authority to step in to protect consumers against future abuses, and we believe that S. 12 will provide that protection and the substitute does not.

The authors of the substitute claim that their bill, the one that we have not seen, would promote competition. Yet they delete the most important procompetitive provisions in S. 12, access to programming and nondiscrimination provisions. For many years, Mr. President, we have worked to ensure that the 3 million Americans primarily in rural America have the ability to receive programming via home satellite dishes.

The committee has found that cable operators who own program services have consistently denied dish owners and other multichannel video services programming or made the program-

ming available at prices much higher than those paid by cable operators.

The access to programming provisions will ensure that satellite dish owners and wireless cable subscribers will have access at reasonable prices, like any one of us.

S. 12 does not require cable programmers to give their programming away for free or even to make it available at the discount rate. It only requires that it be made available and that the price not be discriminatory. And discounts of this amount are not unheard of.

When cable first began, we gave cable operators the broadcast programming for free. That was in the cable deregulation bill. S. 12 could have imposed a much harsher remedy for the cable industry in order to free up programming.

For instance, we required the networks to divest ownership of their diverse companies through the financial interest and syndication groups.

We are not requiring cable operators to divest ownership of their programming interests. In other words, we believe S. 12 takes a reasonable approach to the problem of access.

The supporters of the alternative contend that they have provisions designed to promote competition. Mr. President, I suggest that a cursory examination of these provisions show that there is absolutely no foundation for that contention.

Let us go to expansion of the rural telephone exemption. The act currently permits telephone companies to provide cable in communities with fewer than 2,500 residents. The substitute will raise that exemption to 10,000. In many States with large rural populations, cable systems already serve those communities with less than 10,000 people. Moreover, the substitute does not prohibit telephone companies from buying out the existing cable systems. Thus, some communities, instead of getting competition, will just get a new monopoly owner.

Lifting the multiple ownership rules. This provision will lift an FCC rule that limits the number of broadcast stations one company can own to 12 AM, 12 FM, and 12 TV stations.

This provision has nothing to do with competition. It will simply permit further concentration of ownership in the broadcast industry and thus reduce the diversity of views available on the air waves.

Mr. President, we await the introduction of the alternative or the substitute. We would like to study that, but we have not had the opportunity. So I wish to urge all of my colleagues to read the GAO report and to look beyond the rhetoric being employed by the cable industry. I urge all of my colleagues to vote against the substitute and support S. 12.

So, Mr. President, if I may at this juncture, I will offer the managers' amendment to the bill. This managers' amendment contains technical changes and the retransmission provision, which I referred to in my statement. I understand that this amendment is acceptable to the author of this measure, Senator DANFORTH.

AMENDMENT NO. 1498

(Purpose: To make perfecting amendments)

Mr. INOUYE. Mr. President, with the approval of the author of this measure, I send to the desk an amendment to make perfecting amendments.

The PRESIDENT pro tempore. The Chair understands that the amendment is to the committee substitute.

Mr. INOUYE. Yes, sir.

The PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE] proposes an amendment numbered 1498.

Mr. INOUYE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all on page 66, line 11, through page 67, line 14, and insert in lieu thereof the following:

"(20)(A) the term 'local commercial television station' means any full power television broadcast station, determined by the Commission to be a commercial station, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system (for purposes of this subparagraph, a television broadcasting station's television market shall be defined as specified in section 73.3555(d) of title 47, Code of Federal Regulations, as in effect on May 1, 1991, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include or exclude communities from such station's television market to better effectuate the purposes of this Act);

"(B) where such a television broadcast station would, with respect to a particular cable system, be considered a distant signal under section 111 of title 17, United States Code, it shall be deemed to be a local commercial television station upon agreement to reimburse the cable operator for the incremental copyright costs assessed against such operator as a result of being carried on the cable system;

"(C) the term 'local commercial television station' shall not include television translator stations and other passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

On page 68, line 3, strike "and" and insert in lieu thereof "or".

On page 86, line 24, insert "any one" immediately before "service".

On page 87, lines 3 through 4, strike "or any person having other media interests".

Strike all on page 87, line 6, through page 88, line 11, and insert in lieu thereof the following:

CUSTOMER SERVICE

SEC. 10(a) Section 632(a) of the Communications Act of 1934 (47 U.S.C. 552(a)) is amended—

(1) by inserting "may establish and" immediately after "authority";

(2) by striking ", as part of a franchise (including a franchise renewal, subject to section 626),"; and

(3) in paragraph (1), by inserting immediately after "operator" the following: "that (A) subject to the provisions of subsection (e), exceed the standards set by the Commission under this section, or (B) prior to the issuance by the Commission of rules pursuant to subsection (d)(1), exist on the date of enactment of the Cable Television Consumer Protection Act of 1991".

(b) Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended by adding at the end the following new subsection:

"(d)(1) The Commission, within 180 days after the date of enactment of this subsection, shall, after notice and an opportunity for comment, issue rules that establish customer service standards that ensure that all customers are fairly served. Thereafter the Commission shall regularly review the standards and make such modifications as may be necessary to ensure that customers of the cable industry are fairly served. A franchising authority may enforce the standards established by the Commission.

"(2) Notwithstanding the provisions of subsection (a) and this subsection, nothing in this title shall be construed to prevent the enforcement of—

"(A) any municipal ordinance or agreement, or

"(B) any State law,

concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section.

Strike all on page 94, line 3, through page 95, line 19, and insert in lieu thereof the following:

"(b)(1) Following the date that is one year after the date of enactment of this subsection, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, without the express authority of the originating station, except as permitted by section 614.

"(2) The provisions of this section shall not apply to—

"(A) retransmission of the signal of a noncommercial broadcasting station;

"(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

"(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of this subsection.

"(3)(A) Within 45 days after the date of enactment of this subsection, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such

proceeding the impact that the grant of retransmission consent by television stations may have on the rates for basic cable service and shall ensure that rates for basic cable service and shall ensure that rates for basic cable service are reasonable. Such rulemaking proceeding shall be completed within six months after its commencement.

"(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of this subsection and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which serves the same geographic area, a station's election shall apply to all such cable systems.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.".

Strike all on page 101, lines 5 through 7, and insert in lieu thereof the following:

"(A) any such station, if it does not deliver to the principal headend of the cable system either a signal of −45 dBm for UHF signals or −49 dBm for VHF signals at the input terminals of the signal processing equipment, shall be required to bear the costs associated with delivering a good quality signal or a baseband video signal;

Strike all on page 108, line 20, through page 109, line 5, and insert in lieu thereof the following:

"(3) The signal of a qualified local noncommercial educational television station shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed on by the station and the cable operator. The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the operator, at least 30 days in advance of such repositioning, has provided written notice to the station and to all subscribers of the cable system. For purposes of this paragraph, repositioning includes deletion of the station from the cable system.

On page 112, lines 3 through 9, insert "or 615" immediately after "614" each place it appears.

On page 113, lines 3 through 5, strike "For purposes" and all that follows through "unreasonable.".

On page 69, line 7, strike "Rederal" and insert in lieu thereof "Federal".

On page 78, add "and" at the end of line 7.

Strike all on page 96, lines 24 through 25, and insert in lieu thereof "local commercial television station; and".

On page 98, line 7, strike "carriers" and insert in lieu thereof "carries".

Mr. DANFORTH addressed the Chair.

The PRESIDENT pro tempore. The Senator from Missouri [Mr. DANFORTH].

Mr. DANFORTH. The amendment is acceptable on this side.

The PRESIDENT pro tempore. The question is on agreeing to the agreement.

The amendment (No. 1498) was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM addressed the Chair.

The PRESIDENT pro tempore. The Senator from Ohio [Mr. METZENBAUM] is recognized.

Mr. METZENBAUM. Mr. President, today the Senate finally considers legislation aimed at reining in the monopoly power wielded by the cable industry. I congratulate Senators INOUYE, DANFORTH, and HOLLINGS for their leadership in bringing this measure to the floor. This action is welcome and long overdue.

From the moment the 1984 Cable Act became law, consumers have been at the mercy of an unregulated monopoly. The 1984 Cable Act stands as a monument to the folly of knee-jerk deregulation.

The act was built on the absurd premise that deregulating local monopolies would lead to lower prices and more competition. That worked as badly as our deregulation of the airline and telephone industries. In both instances, the public suffered. I regret to admit that I supported deregulation of those two industries, but I oppose deregulation of cable.

The results of cable deregulation have been a disaster: Higher rates, poor customer service, more vertical integration, and excessive concentration. Complaints about cable come from every part of the country: from Ohio, from California, Tennessee, West Virginia, as well as here in Washington, DC.

Customer service in the cable industry is as bad as it could possibly be. Breakdowns occur with regularity. Customers frequently complain about being unable to reach their cable company by telephone. Telephone inquiries often are answered by an automated system more complicated than useful. And when a human being is finally reached, the response is frequently indifferent and uncooperative.

If a service person actually comes to your home, it is often a nice guy who knows little about solving your problem. I know that the cable companies are delivering bad service at an ever escalating price, because I hear complaints from consumers all over the country, and because I am a customer myself.

In most industries, Mr. President, if service was bad, or the price was too high, you could switch to another company; but the normal rules of the market do not apply to the cable industry. Today, 99 percent of consumers who want cable have no opportunity to choose among competing cable companies. And for the last 5 years, almost every cable system in the country has been exempt from rate regulation by the cities. That occurred because we here in the Congress made it possible and, unfortunately, we did so at the behest of many of the city leaders themselves.

But the bottom line is that virtually no cable system is subject either to competition or regulation. There are no constraints on the prices charged for cable service. Consumers are completely unprotected. It is no wonder that cable rates have soared since deregulation took effect in 1987.

According to the General Accounting Office, cable rates nationwide have increased by over 60 percent since deregulation, more than three times the rate of inflation. Millions of cable consumers have been subjected to rates of over 100 percent since deregulation.

Two years ago, a representative of the Consumer Federation of America testified at a hearing held by my antitrust subcommittee that cable consumers were being overcharged by as much as $6 billion annually. Unfortunately, Mr. President, in this industry, members tell a great deal of the story. In Dayton, OH, rates have gone up 106 percent since deregulation. In Cincinnati, some subscribers have experienced hikes of 152 percent since deregulation. In Youngstown, rates are up 80 percent. The story is the same around the country: Lynchburg, VA, 122 percent; New York City, 95 percent; Albuquerque, NM, 116 percent; Hollywood, FL, 106 percent; Santa Ana, CA, 140 percent.

I will not put Members of this body to sleep by reciting all of the increases across the country, but the list goes on and on.

Why have cable TV rates risen at such an alarming rate? Because the cable industry can hike them with impunity. There is no competitor to undercut them, and there is no regulator to restrain them. An economist with the Department of Justice estimated that about half of cable's profits are the result of its monopoly power. In other words, 50 percent of cable's net revenues are the direct result of the unregulated monopoly power which we have given this industry.

The cable television monopolies have had one long party for the last 5 years, and it has cost consumers billions of dollars in overcharges. It is time for Congress to say that the party is over.

It is my understanding that some Senators will be offering a substitute for S. 12. This substitute would cripple—literally cripple—the effort to protect consumers from abuses by the cable monopolies, and so it apparently

has the blessing of the cable industry. I say apparently because Monday's Washington Post and Tuesday's Wall Street Journal both have stories which say that while the cable industry is telling Senators to support the substitute, it is saying privately in internal memos that it would oppose S. 12, even if the substitute passes.

I think that is another example of the arrogance of the cable monopolies and their lobbyists here in Washington. They are not interested in seriously negotiating a solution to cable's monopoly problems.

They urge Senators to support a substitute bill which would gut cable reform, and then they say privately that they will not even support the bill if their sham substitute passes.

The substitute will not reform cable's monopoly abuses. In fact, the substitute should be called "the Cable Television Monopoly Maintenance Act." It is a gift to the cable monopolies and a slap in the face to consumers. I hope that this body overwhelmingly defeats the substitute.

If the Senate supports the substitute, we will be telling the country that we are less interested in protecting consumers and far more interested in protecting the special privileges enjoyed by an industry with a powerful lobby here in Washington. I will have much more to say on the substitute when it is offered, but I firmly believe that a vote for the substitute is a vote for the cable monopolies and a vote against consumers.

Mr. President, the cable industry has not been content with simply raising consumer prices at will. It also has sought to stifle potential competition from alternative multichannel technologies such as wireless cable and the satellite dish industry.

A key part of the cable industry's strategy is to control the popular cable program channels which are carried on systems around the country. Ten of the 15 most popular basic cable networks are owned or controlled by multisystem cable operators. Let me repeat that: 10 of the 15 most popular basic cable networks are owned or controlled by the big cable companies. Multisystem cable operators control virtually all of the regional sports networks around the country, which have been siphoning sports programming from free TV to cable. And cable companies also control four of the five top pay movie services.

This vertical integration has led some operators to discriminate in favor of programming in which they have equity interests. It also has harmed the viability of cable's potential competitors. Representatives from both wireless cable and the satellite dish business have testified to my Antitrust Subcommittee that the cable industry's control over programming as seriously hampered their ability to do business. The big cable companies frequently have refused to sell program channels they control to these potential competitors, or have done so only on unfair or discriminatory terms.

Let me give you an example. A distributor of programming to home satellite dish owners recently testified that he had to pay 460 percent more for programming than a comparable cable company. Wireless cable operators are shut out from Turner Network Television. And some wireless operators are subjected to "red-lining." This occurs when a cable programmer refuses to allow a wireless operator to distribute a channel to customers who live in areas already served by a cable company. That is monopolistic, anticompetitive and yes, anticonsumer. It is a direct effort to prevent head-to-head competition, the bulwark of the entire free enterprise system.

The cable industry has taken other steps to stifle potential competition. It has invested heavily in new technologies like direct broadcast satellite [DBS] in order to prevent that technology from competing head-to-head with cable companies. Two years ago, I, along with Senators GORE, LIEBERMAN, and SPECTER, sent a letter to the Justice Department urging them to look at the potential anticompetitive consequences of cable's move into DBS. News reports indicate that both the Justice Department and State antitrust authorities are investigating whether the cable industry has attempted to blunt competition from alternative technologies like DBS and wireless cable. I am pleased to see that cable's move into DBS is being closely examined, but I wish the antitrust enforcement officials would move with greater speed.

There are other examples of abusive business practices by cable. TCI, the Nation's largest cable operator, employed a so-called negative option in order to launch its new pay movie service, Encore. TCI put Encore on all of its cable systems and notified its subscribers that they would be charged $1 per month for the new service. Customers who did not wish to receive Encore had to contact TCI and tell the company not to charge them for a program channel which they had never ordered. In other words TCI's attitude was: We are automatically entitled to more money from our customers; our subscribers have an affirmative duty to tell us that they do not want to pay more money for something which they did not request.

How absurd. How arrogant. Only a monopoly could act so arrogantly toward its customers. Fortunately, TCI halted this practice after a lawsuit challenging it was filed by the States.

Mr. President, TCI is the largest cable company in the country, providing service to about one out of every five cable subscribers in the country. It is exhibit No. 1 in the case for reregulation of the cable industry. An article in Monday's Wall Street Journal details the various ways in which TCI has tried to suppress competition and dominate the cable industry. Senator GORE already has placed this article in the RECORD, and I urge my colleagues to look at it.

Mr. President, abusive marketing and business practices are a direct result of the kid-gloves regulatory treatment accorded the cable industry. We should not be surprised by these tactics. Cable is an industry which is accountable to neither competition nor regulation.

While I believe S. 12 begins to move us in the right direction, although not nearly far enough, I am advised that the bill will be attacked by supporters of the cable industry. They may insist that cable lacks monopoly power. But that view is not even shared by the cable industry. Viacom, one of the top vertically integrated cable companies in the country, filed a lawsuit against another big cable company, Time-Warner. In its suit Viacom stated that:

> Each cable operator is a monopolist in its local market or possesses a monopoly share approaching 100 percent.

The suit went on to allege that Time-Warner had "abused monopoly power" in local cable television markets throughout the country.

TCI filed a brief in a tax matter in which it asserted that:

> A cable operator serving a city has a monopoly in the sense that customers desiring cable service will have no choice regarding the provider of that service.

TCI's brief went on to say that;

> There is no goodwill in a monopoly. Customers return, not because of any sense of satisfaction with the monopolist, but rather because they have no other choices.

Mr. President, that is arrogance that is cocky. That is absurd, if we here in the Senate permit it to continue. The American people have no protection unless we in Congress step into the breach of their behalf.

Since 1988, my Antitrust Subcommittee has been chronicling the anticompetitive and anticonsumer abuses of the cable industry. We have held three hearings, put out a report on the programming access problems faced by cable's potential competitors, and kept a close eye on the growing vertical integration and horizontal concentration within the industry. Nearly 3 years ago I introduced—along with Senators GORE and LIEBERMAN—the first bill in Congress aimed at reregulating the cable industry. This year I introduced two cable bills aimed at protecting consumers and promoting competition in cable. I am also an original cosponsor of the bill before us today, S. 12—and I am pleased to say that this legislation incorporates a number of ideas contained in my bills.

The bill we are considering would regulate rates for basic cable service in areas where cable is not subject to effective competition. The bill defines effective competition as another multichannel provider such as a second

cable system or a wireless cable system.

In anticipation of cable reform legislation, many operators are shifting popular cable channels—such as ESPN, TNT, and USA—off the basic tier in order to prevent such networks from being regulated. This retiering is an obvious effort by cable to shield the most popular cable program channels from any kind of price accountability. S. 12 contains two provisions designed to blunt the anticonsumer impact of retiering. First, the bill states that if fewer than 30 percent of a cable system's customers take only the basic tier, the Commission and local franchising authorities may regulate the tier of service which is taken by at least 30 percent of subscribers. Thus, operators will not be able to escape rate regulation simply by creating a minimal basic tier composed solely of over-the-air broadcast channels. The bill also allows cities and consumers to file rate complaints with the FCC whenever rates for channels on higher tiers of service are unreasonable. I urged the inclusion of both these provisions and I am most pleased to see that the managers of the bill and the committee have included them in the bill.

The other key component of the bill is the program access provisions. Under the bill, vertically integrated cable programmers like HBO, Showtime, and TNT are forbidden from "unreasonably refusing to deal" with alternative technologies such as wireless cable and the satellite dish industry. The bill also instructs the FCC to issue rules limiting horizontal concentration and vertical integration in the industry.

This bill is not perfect. I do not believe the managers would claim that it is. It does not go nearly as far as I think it should. I think the regulatory responsibilities should be shared more evenly between the FCC and local authorities. I am concerned that the FCC will be too kind to the cable industry and too tough on consumers. I also believe that there is more that we could do to prevent retiering.

But on the whole, the bill is a good piece of legislation worthy of the Senate's support. The bill gives consumers and competitors the opportunity to hold the cable industry accountable for anitconsumer and anticompetitive behavior. And for that, the sponsors of this bill—Senators HOLLINGS, INOUYE, and DANFORTH—are to be congratulated.

There are some who say that prospects for enactment of a cable bill are bleak because neither the industry nor the White House want legislation. But I can not believe that Congress will turn its back on consumers simply because the cable industry has a powerful lobby here in Washington. As for the White House, I do not believe that the President, who is in serious political trouble, will turn his back on millions of Americans who are being subjected to billions of dollars in overcharges by the cable monopolies.

The cable industry opposes S. 12 for one reason, and one reason only: The bill begins to rein in the power of an industry which is an unregulated monopoly. That may cause distress to an industry which has grown accustomed to wielding monopoly power; but it will bring much-needed relief to consumers.

By passing this legislation, Congress can say to the cable industry: The party is over. You can not raise prices at will or unfairly stifle competition. It is time to play by the same rules which govern everyone else.

I yield the floor.

The PRESIDING OFFICER (Mr. DIXON). The Senator from Washington.

AMENDMENT NO. 1499

(Purpose: To prohibit cable operators from charging subscribers for services and equipment not affirmatively requested by name)

Mr. GORTON. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 1499.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SERVICES AND EQUIPMENT NOT AFFIRMATIVELY REQUESTED

SEC. . Section 623 of the Communications Act of 1934 (47 U.S.C. 543), as amended by section 5 of this Act, is further amended by adding at the end the following new subsection:

"(f) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.".

Mr. GORTON. Mr. President, I have listened with great care to the remarks of my distinguished friend and colleague from Ohio, and I wish him to know that this first amendment goes to precisely one of the concerns which he raised, the so-called negative option. I would like to inquire through the President whether my friend and colleague from Ohio would like to be considered a cosponsor of that amendment.

Mr. METZENBAUM. Indeed, I am happy to join my colleague.

The PRESIDING OFFICER. Without objection, the RECORD will show cosponsorship by the distinguished Senator from Ohio.

Mr. GORTON. Mr. President, for the last several years I have worked with my distinguished colleague from Missouri, my friend from Hawaii, and many other members of the Senate Committee on Commerce, on the bill which we have before us today and on its many predecessors.

Since the bill was reported by a vote of 16 to 3 last May, however, two new developments have come to my attention which are the subject of this amendment and of the one which will immediately follow it. Since both have been agreed to, I am going to speak to both of them at the same time, and then we can deal with them without another speech.

This first amendment, the one before the Senate right now, is in response to a marketing ploy which TCI employed in the State of Washington, and elsewhere, last year.

TCI launched a new movie channel called Encore. The company expected that 60 to 70 percent of all TCI subscribers would take this new service.

This marketing expectation was dependent upon a simple premise that the consumer either would not realize that he or she had begun to subscribe to Encore, or that he or she would not bother to prevent charges from accruing to the account. You might ask, how could a consumer be unaware of purchasing a new service? The answer is quite simple. Under TCI's plan, the cable subscriber would have automatically purchased the service unless that subscriber called TCI and physically canceled it.

This practice, which was much more common in a number of areas when I was attorney general of the State of Washington, is known as a negative option. It has been abandoned by most businesses under most circumstances, sometimes voluntarily and sometimes under the pressure of States' attorneys general offices. Its success relies on the fact that most customers do not scrutinize their junk mail with great care, and they do not look at bill inserts with great care, and they just simply throw away the negative option which they received.

So the first amendment I am offering, one which is before us right now, will prevent any cable company from offering services or equipment by means of using a negative option. At the suggestion of the Washington State attorney general's office, I broadened the amendment from its original language pertaining to video programming to include both services and equipment. The attorney general's office made the suggestion because TCI apparently had tried previously to market its entertainment guide by the use of a negative option. This amendment will make it clear that Congress does not want the public duped into paying for any cable service program, service, equipment, or anything else, without consciously knowing they are

purchasing that service and making a decision to do so.

The second amendment, which will follow on the first one, addresses the issue of subscriber privacy. Several months ago, I learned that in some cable systems, anyone can gain access to a cable subscriber's billing account simply by knowing the subscriber's telephone number.

For instance, in Spokane, served by Cox Cable, anyone can call the main number and talk to Nadine—an automated voice, by the way—who will be more than happy to tell the caller if your neighbors have been paying their bills on time, provided, of course, that you are able to supply your neighbor's phone number. Nosy neighbors serviced by Viacom in Seattle can gain such a similar service just as easily.

My second amendment would require cable systems take appropriate steps to ensure that only a subscriber can gain access to his or her account. A simple means to accomplish this would be to assign a personal identification number known only to the subscriber.

Mr. President, I have discussed these amendments with both the majority and minority managers, and I believe they have been accepted. I will ask first for the acceptance of the first one, and then ask that the second be read and accepted without further interruption.

The PRESIDING OFFICER. Is there any further discussion concerning the first amendment offered by the distinguished Senator from Washington? The Senator from Hawaii.

Mr. INOUYE. Mr. President, I have had the opportunity to discuss this matter with the author of the amendment and the manager of this side, and find no objection. We are prepared to support it.

Mr. DANFORTH. Mr. President, it is acceptable on this side.

The PRESIDING OFFICER. Is there any further discussion concerning the first amendment offered by the distinguished Senator from Washington?

If not, the question is on agreeing to the amendment.

The amendment (No. 1499) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1500

(Purpose: To protect the privacy of cable television subscribers)

Mr. GORTON. Mr. President, I ask for the immediate consideration of my second amendment.

Mr. INOUYE. Mr. President, we have looked over the second amendment, and we find it acceptable.

Mr. DANFORTH. It is acceptable on this side.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 1500.

Mr. GORTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

PROTECTION OF SUBSCRIBER PRIVACY

SEC. . Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 551(c)(1)) is amended by inserting immediately before the period at the end the following: "and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1500) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, as most people know, I plan to offer an amendment to this bill. And I must confess, the amendment is not quite drafted. It is in the legislative counsel's office. As it was initially drafted, it would have been out of order.

I have no intention of delaying this bill. I agree to go ahead; I will not filibuster. I do not like the bill, but my amendment would make it acceptable. I do not physically have it in my hand. For those Members who want to see it, I have a summary of what I think will be 98 percent of the amendment. I do not think the 2 percent is going to be a relevant factor.

Having said that, that is just in the form of an announcement. I am trying to deal in good faith. I just physically do not have the amendment to present.

With that, although I see the Senator from Mississippi, I have some comments. But if he wants to talk now, he may go ahead. I will yield the floor for the moment.

The PRESIDING OFFICER. The Senator from Oregon yields the floor.

The Senator from Mississippi is recognized.

Mr. LOTT. Mr. President, I rise with mixed emotions about this legislation, S. 12. I will have an amendment to offer in a moment. I would like to make some general comments first, and then I will offer that amendment.

I remember years ago, in the early eighties, maybe in the late seventies, when I was serving in the other body, people from the cable industry in my State of Mississippi would come by to visit with me and ask for recognition, in effect, of their industry, and ask for support in trying to provide broadcast accessibility to Mississippi. Many areas in our State could not get television stations because they were too far off. We could not get any coverage at all if we did not have cable. And then, of course, subsequently, the satellite dishes helped.

But I viewed them at that time as a rising, innovative industry that could provide service and information to people in my rural State. I viewed them as the underdogs. I was sympathetic to them and wanted to help them. I thought it was going to be good for cable to provide another vehicle of information beyond just the three networks.

So over the years, I clearly did support the cable industry, and I did support the 1984 Cable Communication Policy Act, which set in motion what I think has been truly a revolution.

The cable industry, in response to that legislation, and in the spirit of entrepreneurship and innovation, developed and delivered to the American consumer a diversity and depth of programming that had previously not been imagined. They have done a magnificent job.

As I listen to much of the debate today, I feel like there are being accused of being such bad boys. I acknowledge that there have been areas in which they made mistakes. They have done things they should not have done, and they should have done some things better. I think it is important to take a minute here and look at what they have done.

Just this past year, we received a live view of the world that we could not have even imagined just a few years ago. We were there in the Persian Gulf. We watched it night after night. It was incredible what we saw.

My wife and I like to watch some of the programs on wildlife. There are so many options now. You can sit there with that control device and move from channel to channel, and it is a great education process. It is a very positive thing for America, and I think that revolution has only begun. Ten years from now, we will be much further down the road because of modern technology that is coming along. Cable will have to change itself rapidly, because developments are going to be getting ahead of them if they do not: Fiber optics, what the telephone industry can offer, and many new things that are in the process.

The industry has created 100,000 jobs since the 1984 act was passed. There has been a tremendous explosion in cable groups and services that they are providing. So I think we need to say, first of all, a great thanks to the cable industry for what they have done.

Have they made some mistakes? Absolutely. In some areas, the service has

been atrocious. We have all experienced it. I have experienced it. I have had my television cable hookup flick off because of one bolt of lightning; it is off 30 minutes, an hour, longer.

There have been instances when I would call a particular cable company's office and get either an answering machine or no answer. There have been instances when the people in my State of Mississippi were not happy that they could not get service from another station, maybe even in another State, which they had been used to watching in the past.

There have been instances where the rates have gone up way too fast. But we must remember that rates had been artificially held down by regulations and controls before 1984.

I was involved as a young lawyer many years ago in trying to get a cable franchise, working with a city trying to explain to them what it was all about. They did not understand. They did not want to hear it, but, if they did want to hear it, they were looking for revenue for their particular city.

I think, clearly, there have been problems with rates, but there have been some reasons for it. Once we deregulated them, they did go up in their rates, some of them a legitimate amount, some of them too far. But they have been improving that now. As an industry, they are providing better service, better assessability. They are getting a grip on rates. The increase in rates has slowed down.

I am for competition. Let us open it up. Let us let everybody get in there and provide service. That is the answer. Competition will hold those rates down.

I understand the need for program access. I think that while there is a right of proprietary ownership, there is also a right for that programming to be available. I have heard some instances where one cable station quit carrying a program, but when a competitor tried to get that program, even though it was not being carried, it was being denied. That is wrong. That is the kind of problems we have had.

I will vote for all kinds of new competition and for opening up the process, but if we start reregulating, if we start going back to what we had before 1984, I fear we are going to "shoot the goose that laid the golden egg." Regulation and reregulation is never the answer.

I have learned over the years that regulation is not pure and perfect. I voted to deregulate the airline industry. If I could take that vote back, I would take it back. And I voted for deregulating trucking. I think it has had some benefits. But, generally speaking, we should err on the side of not having reregulation and controls that stifle competition, expansion, growth, and development, and that is what this is going to lead to, I fear.

What is driving all of this? One is some anger by consumers and by Congressman and Senators because of the excessive rates in some cases and an arrogance, in some instances, by the cable owners. When we have gone to them and said, "You are not providing the right service" or "there is a problem here," they have said. "That's tough. We don't have to answer to you guys any more." That is what made Congressmen and Senators mad.

The other thing is broadcasters want an opportunity to be able to negotiate a fee for retransmission. Everybody has pretty much signed off on that, as I understand. The cable people and the broadcasters have an understanding. I think a provision of that nature is in both bills. That is really the engine that has been pulling this thing. But behind this engine is lined up a whole bunch of cars that are going to cause more trouble.

Now, one of the things that really bothers me is an area that I am going to offer an amendment with regard to—subscriber bill itemization. First of all, do we want the cities and municipalities to deal with a very complicated industry and set the rates? On what basis? Would politics come into play? Would the needs of the city come into play beyond just being able to have the people offered this service? The fact is sometimes the rates have gone up because of hidden, unidentified increases in fees or taxes which the cable has to pay and the cable company passes on to the consumers, and it is not explained. So I will have an amendment that will at least say the cable companies can identify on the bills those fees and taxes charged that drive up the rates. At least let the people know. Let us at least have openness in billing. I think that would be an important improvement, but it is one of the types of problems I see still existing in S. 12.

Now, there is another problem. And it is really related to turning this whole thing back over to the cities. I realize in S. 12 there is a process whereby the FCC can take that ratesetting back. There is a process where it can give it to the cities. But when you look at the history, the record of the cities and municipalities in this area, I think it is one of the things that led us to the problems we had before 1984. There are many horror stories of how the rates were set, how the franchises were granted. In one instance, in Sacramento, the applicant had to promise to plant 20,000 trees in order to win the local cable franchise. Do we want that? In several cities, including, I understand, Miami and Chicago, the cities extracted early upfront payments of several million dollars in anticipated franchise fees from the local cable companies. That is no way to be doing this business.

Should we be sensitive to broadcasting problems? Absolutely. Do we want to make sure that satellite dish owners have access, an opportunity to get what is provided by cable and broadcasting? Absolutely. Let us do that. But, also, in the process, let us not put the cable companies in such a bind they are not going to be able to move forward and make progress, or pay the bills they already owe because they have improved their system so much.

I do not think this legislation is ready for final action. I did not think so when it came out of committee even though I voted for it. I said at the time I think this is a mistake; we have not massaged it enough.

Now, I know the distinguished Senator from Missouri and the outstanding leader from Hawaii will say we have been working on this thing for 3 years. You can work on it 10 years. If you do not get it where it is ready to be voted on, you need longer. Maybe somewhere between S. 12 and the present substitute there is the Holy Grail we are looking for in this area. I think what we are going to do, though, if we pass this bill without some amendments and without further consideration, is mess up everything; there are going to be, in my opinion, a lot of losers and not many winners.

Let us look at what we can do to further find a middle ground, a common ground that will allow the cable industry to continue to grow and improve the way they have done the last 8 years, at the same time assisting them in curing some of the abuses that they have had to deal with and I think they are dealing with now.

AMENDMENT NO 1497

(Purpose: To permit cable operators to itemize on subscriber bills not only franchise fees, but also other taxes and regulatory costs.)

Mr. LOTT. Having said that, Mr. President, I would like to offer my amendment that I have at the desk dealing with the subscriber bill itemization to give the cable companies an opportunity to itemize these so-called hidden costs, to explain to the people what is involved in the charges so they will know it is not just the cable company jacking up the prices.

I understand the managers of this bill are willing to accept the amendment. I would like to offer the amendment at this time.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 1497.

Mr. DANFORTH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SUBSCRIBER BILL ITEMIZATION

SEC. . Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, in accordance with standards prescribed by the

Commission, as a separate line item on each regular bill of each subscriber, each of the following:

"(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority to which the fee is paid.

"(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels, or the use of such channels.

"(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.".

Mr. INOUYE. Mr. President, I have had the opportunity to discuss this matter with the author of the amendment. There is nothing in this law that would prohibit carrying out of the intent of this amendment. However, I believe this amendment will clarify that. So we support it.

Mr. DANFORTH. Mr. President, while I, of course, had hoped the speech of the Senator from Mississippi endorsing the legislation would be perhaps somewhat more enthusiastic than it turned out to be, his amendment is acceptable on this side.

The PRESIDING OFFICER. Is there further discussion regarding the amendment offered by the distinguished Senator from Mississippi?

Mr. LOTT. Mr. President, I thank the distinguished Senator from Missouri for his remarks. Passage of this amendment will certainly encourage me to consider it further and in his usual inimicable way he will find ways to make progress in the passage of this legislation.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1497) was agreed to.

Mr. LOTT. I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1501

(Purpose: To provide for designation of channel capacity for commercial programming from a qualified minority programming source)

Mr. INOUYE. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE] proposes an amendment numbered 1501.

Mr. INOUYE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 83, between lines 20 and 21, insert the following new subsection:

(d) Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by adding at the end the following new subsection:

"(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source (if such source is not affiliated with the cable operator), if such programming is not already carried on the cable system. The channel capacity used to provide programming from a qualified minority programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming on that cable system under this subsection.

"(2) For purposes of this subsection—

"(A) the term 'qualified minority programming source' means a programming source which devotes significantly all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned; and

"(B) the term 'minority' includes Blacks, Hispanics American Indians, Alaska Natives, Asians, and Pacific Islanders.".

Mr. INOUYE. Mr. President, this amendment carries out an intent that all of us support. This is to encourage, to enhance, and to promote carriage of minority programs. I have discussed this matter with the manager, Mr. DANFORTH, and he, I believe, supports it.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. That is correct, Mr. President. It is acceptable.

The PRESIDING OFFICER. Is there any further discussion regarding this amendment?

The question is on agreeing to the amendment.

The amendment (No. 1501) was agreed to.

Mr. INOUYE. I move to reconsider the vote.

Mr. DANFORTH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 1502

(Purpose: To add a subsection to section 614 of the Communications Act of 1934 as amended by this bill)

Mr. BREAUX. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. BREAUX] proposes an amendment numbered 1502.

On page 103, after line 24, add the following:

"(g) Nothing in this section shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program-length commercials.

Mr. BREAUX. Mr. President, the cable legislation that is pending before the Senate is going to be hotly debated on the question of rate regulation, the question of the involvement of the local communities in helping to determine rates that are fair. The cable bill also says that cables that carry broadcast signals to local communities must ensure that the public has access to all of the local broadcast stations.

One of the provisions that is in the chairman's bill, I think in a substitute that will be offered to that, is a provision that basically requires that cable operators set aside channels on their cable system to carry the local affiliates, to ensure that the people in a community have ABC, NBC, CBS, the Fox network, the public television, and the other public broadcast stations on that cable system. So when you turn on your cable system at night you can get the local news, you can get your local stations, you can get the networks, and you can be fully tuned in to what is happening in commercial television.

I think that is good. I think that is appropriate. I think that is proper.

There is one feature that disturbs me a great deal. It is something that is relatively new; that is broadcast stations that really broadcast commercials 24 hours a day. All of us flipping through our cable channels or our television channels have come across these broadcast stations that say, well, we are the shopping network type of program, 24 hours a day. You turn them on and they are selling the zircon rings, food shoppers, dresses and everything that you can possibly imagine. People watch them. People purchase those products. And I think that is totally appropriate and proper.

The thing that concerns me, however, and the thing that my amendment addresses, is to raise the question of whether this is something that must be carried by cable systems. My amendment certainly does not prohibit a cable system from carrying these 24-hour stations that broadcast commercials on a 24-hour-a-day basis. If they want to carry them, if the public demands this type of programming, so be it. They have the right to do it.

But what the legislation says in the main bill pending before the Senate at this time, the main thrust of that dealing with this is that there are certain things that cables have to carry. There is no discretion. That is the must-carry provision in the legislation.

I object to that because I do not think that these types of 24-hour stations that do nothing but broadcast commercials ought to be given that greater privilege of the must-carry status.

They will argue that, well, these stations are meeting the public interest because the public wants to see this. I would suggest that the public interest standard that communications legislation governed for years went much

further than that. As an example, when we talked about the privilege of having a broadcast license which, after all the spectrum belongs to the public—it does not belong to any person—there were certain standards that communication policies and communications acts set up in order to make sure that these people who had a broadcast license, served the needs of the public. They talked about public interest. They talked about promoting diversity of views.

We talked about keeping people informed. Your local broadcast TV station in the city of Chicago or anywhere in Illinois or in Louisiana goes through a great deal of time and effort and planning to meet the public needs of a community, to meet that public interest test. They have local news, sometimes three times in an evening and several times in the morning and perhaps one time at noon. They have local features on the local community.

These stations give access and time to charitable organizations within the community to try and promote events in the local community. All of this is done by these local broadcast stations in order to meet this public interest test, this public standard of serving the needs of the community, because after all they have been given something, the spectrum, the ability to broadcast over the public airwaves. So, therefore, it is appropriate and proper that they be required to meet some public need and necessity in the public community.

As I have said before, these stations that we all are familiar with are being broadcast now. They have a vast listening audience. No one that I can think of has any difficulty in finding one of these channels. Many cable companies run them because they want to, because there is a market for them.

I would suggest to this body that when we give the must-carry privilege to a broadcast station, we have to be a little bit more selective than giving it to any station and every station in America.

I would suggest that a station that broadcast commercials 24 hours a day or maybe 23 hours a day, interspersed with the reprogramming of the same so-called public interest program, does not meet that test. They provide no weather, they provide no local news, they provide no local coverage of current events within a community. The only thing they do is run commercials. Some people like that. Some people will sit in front of a television set at 3 o'clock in the morning and watch them sell zircon rings for $29.95 plus shipping, and the shipping cost sometimes costs more than the product they are buying.

There are groups and organizations in this country that are very concerned about what is happening. The Consumer Federation of America, who support this amendment, among others, are very concerned that what is happening is that people are buying television stations just to run commercials 24 hours a day or 23 hours a day and now, lo and behold, this legislation says that not only are they going to have the right to broadcast, they are going to have to broadcast, they will have to carry.

I would suggest that is a step in the wrong direction. Should they be able to broadcast? That is the FCC's determination. But here, in determining whether they have to be carried on a cable network and have to be carried by every cable network, I think it going far too far.

I am really concerned that if we say to these stations that you have to be carried, what are we telling all of those other local television stations that spent a great deal of time, a great deal of effort, and a great deal of money putting in a local news department, putting in weather men and women, putting in people who do nothing but make sure their station meets the public need and necessity of their local communities?

Why do they not all just go to 24-hour commercials, if that is the way to make money? The heck with the public interest, the heck with what is good for the community. I can make money and the cable companies have to carry my station that does nothing but broadcast commercials. Why do all of us not just do that?

Is that the direction in which we are headed? Is that what we want for communications systems in this country, all to be commercial stations running nothing but commercials?

My amendment says, Mr. President, very simply, that nothing in this act shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations, or program-length commercials.

What we are talking about is a program that consists of nothing but commercials. My distinguished chairman of the subcommittee was generous and fair in allowing a separate hearing on this issue. We had folks who owned these 24-hour-a-day commercial stations that broadcast commercials come and testify and to try and make their point as to why we should give them the special privilege of must-carry. They worked hard at trying to convince the committee. Certainly, they did not convince this Senator that they were appropriately conferred a must-carry status. They tried to make the case that, "Well, we serve the public interest, because we do not run commercials all of the time. Sometimes we have as much as an hour out of 24 hours that is devoted to something else."

Mr. President, it was almost to the point of being ridiculous, in this Senator's opinion, that they would argue that a station that reserves 1 hour out of 24 for talking about or showing a program with a veterinarian discussing heart worms was a public service. Yet, we see examples of these commercial stations that at 2 o'clock in the morning will run a public service program of a veterinarian talking about heart worms in animals and saying, "Well, we met our public interest test. We do not run commercials all of the time. By golly, just last week, we had 3 hours in the whole week talking about heart worms."

Mr. President, I suggest that that does not meet the public interest standard, the public interest test. No one can argue, I think, with a straight face and say these types of stations are providing the diversity of public interest, local community information, that I think is required. And I think that the Communications Act used to require, before this FCC got involved with it, what a local population really demands, and what the public is entitled to, because, after all, we are talking about the public airwaves. They cannot argue to this body that, well, we have different commercials so, therefore, there is diversity. We do not just sell zircon rings; we sell clothes and radios. That is not the diversity we are talking about—23 hours a day of nothing but commercials, although they may be different commercials. That is not the diversity that the Communications Act, since the 1930's, talked about.

We were trying to encourage stations that use the public airwaves to meet the public interest. I think that it is not sufficient to say that, well, because people like to watch these 24-hour-a-day commercial stations, they now are justifiably given a higher status in the legal spectrum of being deserving of must-carry status.

Regardless of how anybody feels about the legislation before us, whether you are for the committee substitute, or whether you are for the substitute that will be offered, as I understand it, later, I think we can find a common interest here in saying that no matter what we do on this cable legislation, let us not make the mistake and open the door so that all of our local TV stations around this Nation will proceed to convert to nothing more than stations that run commercials almost nonstop 24 hours a day.

Without my legislation, my amendment to the committee bill, I think that we will see the foot-in-the-door type of an approach. We will be sending the signal that we do not care about local diversity; we do not care about local news; we do not care about local interest programming for a station. Do not do that anymore.

All of you have been worried about this for so long, to meet this public interest test, and that is not necessary. Just run commercials and do it on a 24-hour-a-day basis, and we will pro-

tect you. We will elevate your status in the legal system to must-carry.

I think that is wrong. Thirteen cosponsors of this legislation also think that it is wrong. Senators BENTSEN, BIDEN, HEFLIN, DASCHLE, SHELBY, WOFFORD, ROTH, SPECTER, KASTEN, SYMMS, LOTT, BURNS, COATS, all agree that these stations ought to have the right to exist; they ought to have a right to broadcast their signals. But when you are requiring cable companies to carry ABC, and NBC, and CBS, and Public Television, and other things that are covered by must-carry, there is a limit. There is a limit. It should not be just carte blanche, that anybody that goes out and buys a station can get must-carry status.

It is clear in my mind that what is happening is that some of the folks who have these shopping stations, who want to broadcast 24 hours a day, are now going out around the country and buying basically low-powered stations just so they can stick their foot in the door of this bill. So that once they grab that license, which is a public item, that is a public airway, and once they pay money for it, now they can say: You have to carry us, cable company. There has to be a must-carry provision that applies to us. I think that is wrong, Mr. President.

I know there will be others who want to talk on this, and I certainly have no difficulty in having this set aside, if the substitute is prepared to be offered or if other amendments come in. The chairman asked for amendments to be brought to the floor and offered, and I am doing that now. This amendment will be considered at some point as an amendment to either—which it is now—the committee substitute, or perhaps to the substitute that will be offered. At the appropriate time, I will ask for the yeas and nays and would be prepared to do that when there are more Members on the floor. At the present time, I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have the greatest respect for my friend, the junior Senator from Louisiana. We served together in the other body and have worked closely together here on many different issues. But I have to say to my colleagues in the Senate, and to my friend from Louisiana, that he is wrong on this issue. This amendment is a clear case of content regulation.

Mr. President, should Congress be determining what the public watches on television sets in the privacy of their living rooms? I do not think so. We here inside the beltway should not become police officers for the rest of the Nation for what they can or cannot watch.

There are lots of advertisements that I think are pretty bad that I wish were not on when I want to watch a sporting event or some other program on television. But I do not think that the Presiding Officer, or any other Senator, should have the right to determine what can or cannot be advertised.

This amendment offered by the junior Senator from the State of Louisiana makes a subjective judgment based on content. What will be next? This network does, in fact, spend a great deal of its time having people—Vanna White, for example, is one of the stars of this network. She sells things on this program, and she has a big audience.

I have been advised at one time she was ill and numerous phone calls came in and said, "Where is Vanna?" Now what right do we have to say that she cannot be on this program? And that is, in effect, what we are doing.

Mr. BREAUX. Will the Senator yield?

Mr. REID. I am happy to yield.

The PRESIDING OFFICER. The Senator yields for a question from the Senator from Louisiana.

Mr. BREAUX. How does the Senator interpret that anything in my amendment prohibits Vanna White from being on a broadcast TV station? She can go on a TV station and let them broadcast as many times as they want. I am not preventing Vanna White—I never want to prevent Vanna from being on television.

Mr. REID. Well, the Senator would unintentionally be doing that because this television network that the Senator is, in effect, trying to ban from the must-carry provision is different than any other and exempting it from must-carry would prevent her from being on the cable systems. She could still do her program, but it would not be in keeping with the rest of the law that governs all other TV networks.

Mr. BREAUX. If the Senator would further yield, we are not talking about only one network. Any network that predominantly just broadcasts commercials would be prohibited from getting must-carry.

The point I am making and asking the Senator to respond to is, we are not telling anybody they cannot broadcast commercials on TV stations 24 hours a day. All the amendment says is that a station that does predominantly nothing but commercials should not be elevated to must-carry status. They can still have their television station. They can still broadcast 24 hours a day.

Mr. REID. But that, Mr. President, is the whole point of my opposition to the amendment. Why should this network be treated any differently than any other? Why should there be this exemption? I mean, are we going to determine it on the basis of how good the advertisements are or how good the programming is to sell a product? Or what period of time is used during a program to sell a product?

The amendment offered by the Senator from Louisiana makes a subjective judgment on content. What will be next? Will we, the U.S. Senate and the House of Representatives, decide that religious programming should be banned from cable access? Will we want to take children's cartoons off the air? Or only certain kinds of cartoons?

Mr. President, I do not really think this is different than book burning—maybe a little different in degree, but the same principle. We are saying, "We don't like this programming so nobody else should watch it either." And that is wrong.

I believe, contrary to what has been put forward, that this amendment will jeopardize the constitutionality of must carry. Content regulation is a clear assault on the first amendment. In fact, the amendment currently before us approaches a bill of attainder. We are taking away the right of access from a legitimate business.

This is a legitimate business. It may be different than NBC or ABC or C-SPAN, but it is something that millions and millions of people watch and they like to watch. If they do not like it, they can turn it off, switch channels.

Cable operators are the gatekeepers to America's living rooms. Cable is in more than half of the households in this country, and that percentage is growing. If it is not on cable, more than half the people will not see it.

For example, TCI and Comcast, two very large cable operators, control their own version of a home shopping type program called QVC. This puts these large cable companies in direct competition with the Home Shopping Network. Of course, they do not want to carry it.

Channel 14, a black station right here in Washington, carries Home Shopping. TCI will not carry channel 14 as a result. Therefore, this local station, predominantly owned by African-Americans, can only reach less than half their audience. This is not right.

Many local stations carry program-length advertising. For example, many real estate businesses have half-hour shows to display the houses they have for sale. They buy the time. That is what the whole program is about.

Now I personally am not much into watching those kinds of programs. I am not really much into watching these home shopping programs. I do not think I have ever watched one for more than a minute or two. But I can turn the channel, as I do, or I can turn off the TV set.

I should have the right, if I want to watch a real estate presentation for a half-hour, hour, or 15 minutes, or I should be able, if I care to, Mr. President, to watch Home Shopping for as long as I want or as short a period of time as I want. There should not be an exception to this one network because of the type of programming it is.

Who are we going to go after next? Local stations need this revenue to

survive. The Home Shopping Network employs 6,000 people nationwide and is affiliated with about 80 stations beyond the 12 they own. In this economy, should we be legislating more people out of work? I think not. Home Shopping Network is a legitimate, a viable, and a good business.

We should be creating jobs here in Congress, according to what we were told last night in the Chamber across the Hall. And I agree with what President Bush said. We should not be eliminating jobs.

The Home Shopping Network should be treated like any other broadcaster. They meet all the FCC criteria with regard to public service. They are a legitimate business, they provide a service people want, and they deserve to be treated fairly.

People have a right to choose what they watch. If we do not provide must-carry for Home Shopping we will be limiting their choice without their consent. This, I think, is unfair. It is not right. And some would say it is unconscionable.

This amendment, Mr. President, should be defeated.

I yield the floor.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I rise to say that I feel very strongly that this amendment by my colleague from Louisiana would not be in the best interests of broadcasting.

What happens, I think we all know, is that when a cable company owns a part of a shopping network, that network is allowed on the air—I think that is the case in the District of Columbia—but the other ones are not or other competition. I think what we are doing here is that we are ensuring competition.

Now, a cable company can own a part of a shopping network and, if that is the case, then they will let that one on the air but no other. And that is really what we are talking about here in the baldest of terms.

So by virtue of this legislation, the competition would also be on the air. And a network, if owned in part by the cable TV, could not be favored. I think that is what it really boils down to.

So we want that competition. I think the bill, as written, is very good in this area, and I strongly oppose this amendment.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I just want to make a couple of comments. I do not want to interfere with anybody else's desire to be recognized, and I will be happy to yield in just a moment.

I want to put a statement in the RECORD from the Consumer Federation of America. They do not have an ax to grind in this. They do not represent a cable company. They do not represent a network. They do not represent a broadcast station. But they are concerned about the interests of the American people.

The Consumer Federation, in support of what we are trying to do—and I will submit their letter for the RECORD—says they are very concerned that the scarce public resource that we are talking about, the public airways, is being used for full-time home shopping. "In exchange for the free use of this resource, broadcasters agree to serve as 'public trustees,' and promise to place the public's needs ahead of their own."

That is what stations who get broadcast licenses are supposed to follow, that type of standard, a public interest standard, not just their pocketbook standard.

And that is why you see the Consumer Federation of America, which does not have an ax to grind, they do not have a dollar in this fight, they do not have an economic interest in this fight, but they do have an interest. That interest happens to be the American consumer. That is why they support what we are trying to do along with other groups and organizations, like the Media Access Project which watches what is coming out over the airways; National Cable Television Association, which does have an interest in this; Small Rural Cable TV Association—in support of this.

The only other point I would make is that we are not trying to keep these companies that have 24-hour commerical broadcasts, broadcasting one ad after the other, off the cable system. My amendment says nothing in the bill shall require or deny a station, which does nothing but broadcast commercials, from being on a cable network.

What we are saying is let us be neutral. Many cable systems already carry these shopping type of programs. Some of the cable systems carry more than one. They do it because they think it is the right thing to do. It serves the needs of the people.

My point is that we should not make them do it. We should not mandate them doing it. They have the right to negotiate with a cable company to get on their system. If they do not, they can just broadcast, just like any other broadcast station that is not on a cable system.

My amendment is supported by the Consumer Federation of America and other interest groups that do not have a dog in this fight, from an economic standpoint. The reason they support this amendment is because it does serve the public interests. After all, we are talking about communications. We are talking about the public interest because we are talking about the public airwaves.

I think the bottom line is that nothing in my amendment prohibits a home shopping type of program from being on the cable system. It just says the cable system does not have to require them to have space on that cable system.

Mr. GRAHAM. Will the Senator yield for a question?

Mr. BREAUX. I will be happy to.

Mr. GRAHAM. Reading the amendment, it states:

> Nothing in this section shall require a cable operator to carrying on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program-length commercials.

Would that require the cable operator to apply a consistent standard? That is, if there were, let us say, three channels which came under the definition of "predominantly utilized for the transmission of sales presentations or program-length commercials," they would have to include all three? Or could the cable operator say I will carry two but not all three? Or one but not all three?

Mr. BREAUX. As long as the cable operator, under my amendment, has the right to carry a station or a broadcast signal that is predominantly a 24-hour-a-day commercial broadcast station, that does nothing but broadcast commercials, that cable operator has the right to decide to carry them or not carry them.

They would also, in my interpretation, have the right to decide which they would want to carry or which they would not want to carry.

Mr. GRAHAM. So the Senator is saying, in my hypothetical, if there were three stations that met the definition, the cable operator could decide that he would carry A and B but not C?

Mr. BREAUX. He could carry none of them, he could carry one of them, or he could carry all of them.

Mr. GRAHAM. If the theory is that there is something perverse about this type of broadcasting that does not warrant it being given the status of must-carry, why should the cable operator be able to make two decisions: First, whether he wants to carry any or all of that type of programming; and, then, second, the right to pick and choose among similar cable operators?

Mr. BREAUX. I think the theory behind the bill—and others may be able to speak to that—requiring must-carry for the networks, NBC, ABC, CBS, public television, or what have you, is that these programs on those stations meet the public interest, meet the public necessity, meet the standards by which a normal station is given a broadcast license: Serving the public interest, local community's interest, with a diversity of programming which includes everything that occurs in the local community, news, weather, sports, plus entertainment programming. It is a diversity coming from those type of networks and those type of signals.

Therefore, must-carry is appropriate for those type of signals that meet that spectrum of public interest requirements.

My amendment says that a station which does nothing but broadcast commercials 24 hours a day is not a station that is deserving of a requirement that it must be carried.

They can be carried or they do not have to be. But they should not be forced to be carried.

Mr. REID. Will the Senator from Florida yield for a question?

Mr. GRAHAM. Could I continue to ask a couple of more questions of the Senator from Louisiana?

Mr. REID. Of course.

Mr. GRAHAM. My concern is what we have really done here is we have put the individual cable operator in the position of exercising economic discrimination. The allegation has been made that the effect of this would be that those over-the-air or cable-generated predominantly advertising channels which have an economic affiliation with the cable system are going to be preferred, and that those that do not have an affiliation with the cable system will be precluded.

It would seem to me that, as the Senator explains the amendment, it would allow that type of economic discrimination.

Mr. BREAUX. I would respond by saying to the Senator from Florida, two points essentially. No. 1, they can do that already. Cable companies decide right now, without must-carry, what type of programming they put on. Many cable companies put programs that they produce on their cable systems. So it is already the current system where they make an economic decision on what they are going to show.

If they have an interest in the program, they may be more inclined to show that program. If it is a cable program that has a great deal of interest in their community, that they do not own, they would probably also put that one on their cable system.

My point is that it is wrong for this Congress to force a cable company to put on their system a station that does not in any stretch of the imagination meet the traditional public interest, public need and necessity test.

If they want to do it, let them do it. But do not make them to it. And that is why the Consumer Federation of America says this is the wrong thing to do and they support this amendment

Mr. REID. Will the Senator from Florida yield for a question?

Mr. GRAHAM. Mr. President, I request the floor for purposes of yielding to a question and then making a statement.

The PRESIDING OFFICER (Mr. GORE). The Senator from Florida is recognized.

Mr. GRAHAM. I yield to the Senator from Nevada.

Mr. REID. Under the amendment as it has been submitted, does the Senator know whether a company that offered 12 hours and not 23 hours, or whatever the case might be, would they be subject to this discriminatory legislation?

Mr. GRAHAM. The language of the amendment states "* * * is predominantly utilized for the transmission of sales presentations or program-length commercials." The word "predominantly" is not defined.

Mr. REID. Predominantly could mean different things to different people, could it not?

Mr. GRAHAM. I suppose it could even mean a plurality of time. Let us say you broadcast 10 hours of commercials, 6 hours of weather, and 6 hours of other programming, that since the predominant—the plurality of your time would be in commercials, that you would be potentially subject to this definition.

Mr. BREAUX. Will the Senator from Florida yield back to me so I can elaborate on that point?

The intent of "predominantly utilized for the transmission of sales presentations or program-length commercials," the purpose in defining it that way is to give the Federal Communications Commission, which enforces these rules and standards, the direction from the Congress to what is intended.

As far as the exact number of hours, the Federal Communications Commission could be involved in determining what is predominantly a commercial broadcast station.

There is flexibility in there for fairness. But I think it is clear what we are trying to accomplish, and the FCC sees no problem with taking that definition and applying it to the circumstances that are in effect in the business today.

Mr. REID. If I could—I recognize the Senator from Florida has the floor—it seems to me, and I am asking the Senator from Florida if he might agree, that this is very typically what we do—that is, the Congress does. We pass a law that says "predominant" and then we ask the administrative agency to define what we mean when we do not know what we mean.

Mr. GRAHAM. That would be true except, in this case, unless there is something beyond what is printed in the amendment, it looks to me as if the judgment is going to be made not by a governmental agency such as the FCC, but will be made by the cable operator as to whether the program is "predominantly utilized for the transmission of sales presentations," and then the judgment having determined it meets that standard, whether to keep it off the air or not. I do not see a directive for the FCC to generate a consistent standard of regulation that can be used to make that determination on predominantly utilized.

Mr. REID. I was responding to the answer from the sponsor of the amendment.

I will ask the Senator from Florida one additional question. There is no dispute TCI and Comcast are large cable operators and control their own version of a home-shopping-type program with no limited hours. It is called QVC. Under this amendment, they could do anything they want to do, but yet this network would be discriminated against. Is that your understanding?

Mr. GRAHAM. Mr. President, that appears to be the way the amendment is structured. You do not have to apply a consistent standard. If you think that your viewers should be screened from having to view any of these programs, that is one issue.

But what, as I gather, is going to occur here is the cable operator will pick and choose which channels to allow on the air and which to shut down, and there is going to be a strong economic incentive to only allow on the air those channels in which the cable operator has an economic interest.

Mr. REID. I appreciate the Senators yielding for questions.

Mr. GRAHAM. Mr. President, I believe that we have here a clear case of economic discrimination. The Senator from Louisiana correctly points out that the current law allows cable operators to do exactly what they would be allowed to do if his amendment were adopted. That is the reason that we are considering this legislation, is dissatisfaction with the current law.

One of the aspects of that dissatisfaction with the current law is the fact that cable operators are not currently required to provide access to their systems to all of the FCC-licensed stations within their broadcast area. That is one of the significant objectives of this legislation, an objective that would be compromised if this amendment were to be adopted.

Second, we are not talking here about rogue, pirate television stations. All of these stations have an FCC license or they would not be operating over the air unless they were licensed and regulated pursuant to FCC standards. I assume, thereby, that the FCC has applied its consistent standards of public interest in granting and continuing the license to these stations.

I believe that we are going down a very slippery slope if Congress now has to say we are going to establish another set of standards and values on program content beyond that which we have previously assigned the FCC to make. As the Senator from Nevada suggested, if today the judgment is that we should keep off the air a station that broadcast predominantly these 30-minute programs of people telling you how to sell real estate, or how to make a fortune in the gold market, or all of the other areas, stations that have that as their predomi-

next programming, tomorrow are we going to say that our standards of religion are such that we should preclude a particular sect from having access to the must-carry provision, that we are going to put them at a secondary and inferior status in terms of our own standards of what is appropriate content?

I believe that we made a wise judgment in placing this standard with the Federal Communications Commission requiring them, through a very open and arduous process, to establish standards for broadcast licensees and then to enforce those standards. And we would be making a serious error if we were to impinge upon that judgment.

I believe that the issue was raised in the letter from the Consumer Federation about the limitation on numbers of channels. The fact is the technology of most cable TV systems today is of a massive explosion of the ability to deliver channels. The company that I am particularly familiar with in Florida has indicated that they are about to put on several channels reserved for pay-for-view in order to take advantage of that new market opportunity.

I do not believe that there is any reasonable issue here that cable TV capacity is going to be strained by enforcing a consistently applied, must-carry provision for all of the FCC-licensed programs within the particular area.

Finally, Mr. President, I return to the very serious issue of economic exclusion and the congressional involvement in program content. We are about to establish a legislative standard that is extremely vague, a service that is predominantly utilized for the transmission of sales presentations or program-linked commercials.

Just recently, we celebrated a 40th anniversary in America. It was the 40th anniversary of the NBC program "Today." There were many critiques written of the 40-year experience of "Today." One of the recurring criticisms of the "Today" program was that throughout its period, it has been excessively—I think the term was used somewhere between puffery and pandering, in the sense that it promoted the programs and interests of the National Broadcasting Co. in its own program content.

Are we going to say that a program like the "Today" show would fall under the category of being essentially a sales presentation or program-linked commercial for its own network because of someone's characterization of its propensity to use its content to advance the interests of the network? I believe that would be a serious error for the Congress to involve itself in that issue.

Mr. President, we are moving in a proper path in terms of assuring access to cable TV for all legitimate FCC-licensed broadcasters. We should not compromise the attainment of that objective by the adoption of this amendment.

The PRESIDING OFFICER. Who seek recognition? The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I would like to direct a question to the author of the amendment when he returns to the floor.

Let me, first of all, add a few remarks. I am very much concerned about the precedent this type of amendment would create. Is it now time for Congress to begin to regulate what Americans choose to watch? I think not. This amendment is clearly subjective content regulation.

As I understand, the networks affected directly by this amendment are considered by the FCC to be regular stations licensed by the FCC and meeting all the FCC qualifications. The argument being made here today is that limited spectrum should not be taken up by home shopping services.

I could ask the same question, whether the 1,000th rerun of "Happy Days" should take up spectrum space. The must-carry provisions in S. 12 have been carefully drafted. To single out these stations alone for exclusion of must-carry provisions would make these very provisions subject to constitutional challenge.

I would like to ask the author of the amendment two questions: First, would carriage of any over-the-air station under S. 12 jeopardize in any way the carriage of other cable services?

Mr. BREAUX. Mr. President, I would respond to the Senator by saying there is a limited number of channel space available on cable systems, which is one of the reasons why I am offering my amendment. If we have to require that ABC, NBC, CBS, public television, and others be carried on the cable system, and also require that we carry stations that do nothing but broadcast commercials, I am very concerned that the space on these cable systems will not be sufficient.

So you may see a cable system carrying 24 hours of commercials, and eliminating public television, or NBC, for that matter.

It is one of the reasons why the amendment is being offered. We should not force a cable system to carry a station that does nothing but broadcast commercials.

Mr. PRESSLER. But is it not true that there are a vast number of slots available? For example, in the District of Columbia the cable channels, I do not believe, have ever been filled, as far as I can tell from my cable which I receive at home.

Mr. BREAUX. That is true in some areas. In many areas it is not true.

Mr. PRESSLER. In what areas is it not true?

Mr. BREAUX. Crowley, LA, my hometown.

Mr. PRESSLER. It has been my observation that there is spectrum available in most cable situations.

Mr. BREAUX. That is simply not true. The spectrum is getting smaller and smaller as we have more and more programming and stations and networks that are being formed on a day-to-day basis. I would offer my amendment if there was unlimited space on the spectrum for a cable company. I would offer my amendment if a cable had 100 channels and it only had 5 being used. I do not think we ought to elevate the status of the station that broadcasts nothing but commercials to a must-carry status. It is the public interest we are talking about, which I do not think we meet.

Mr. PRESSLER. I think the principle that no cable services would be taken off the air is a true principle; is that not correct?

Mr. BREAUX. In some cases, yes, and in other cases, no.

Mr. PRESSLER. Let me ask my friend how he would deal with the cable monopoly situation. I note the Wall Street Journal had a long article the other day about TCI. I ask unanimous consent that the Wall Street Journal article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Jan. 27, 1992]

CABLE CABAL: HOW GIANT TCI USES SELF-DEALING, HARDBALL TO DOMINATE MARKET

(By Johnnie L. Roberts)

ENGLEWOOD, COLO.—In many ways, Tele-Communications Inc. is a classic tale of bootstrap entrepreneurship. From a tiny company struggling in the scrubland of West Texas, TCI has built itself into the world's biggest cable-television enterprise. One of every five American cable users is wired into TCI in one way or another, and about 20% of the industry's entire revenue flows to this behemoth.

To many of its rivals and customers, though, TCI represents not the best but the worst in American business—a monopolistic, strong-arm bully, they say, that squeezes other cable operators, denies free competition to programmers and flagrantly disrupts the plans of rivals. The "ringleader" in the "cable Cosa Nostra" is what Sen. Albert Gore Jr. of Tennessee calls TCI. Contends Mel Cohen, the mayor of Morgantown, N.C., where TCI operates a cable system: "TCI is trying to crush our city government."

TCI, which owns more than 1,000 cable systems, is also very tightly controlled. Bob Magness, TCI's founder and chairman, and John C. Malone, its chief executive, built and dominated the company in part through internal self-dealing, an investigation by The Wall Street Journal shows. In one case, the two sold to TCI a group of Utah cable systems the company apparently already owned.

GETTING CONTROL

Their stock transactions—often only partially disclosed in federal filings and usually unavailable to other shareholders—may or may not have violated securities laws; the law prohibits corporations from withholding important information from shareholders. But the objective of the dealings appears clear. Through these and other transactions, the two men built one of the most in-

fluential and feared companies in the television industry, and granted themselves effective control over it. Many contend that consumers ultimately paid the price, as TCI worked to squelch competition in the cable industry.

TCI emphatically denies engaging in any questionable transactions with its top two officers, or anyone else for that matter. Any suggestion that "when we paid Magness and Malone shares we were paying them for assets we already owned is false," a spokesman says. He cautions, however, that the denials and elaborations are based on the "collective recollection" of TCI executives, and that he didn't consult Messrs. Magness and Malone, who declined to be interviewed specifically about the transactions. Further, the company says it was unable to retrieve records from storage that bear on the internal stock dealings.

The spokesman says allegations the company is a bully in the market are also false. He says TCI just tries to offer the best service at the best possible price, amid rising competition.

For his part, Mr. Malone does say in an interview that, in general, TCI's transactions with its top officials are merely a way of supplementing salaries and teaching top brass about different aspects of the cable business. "TCI has one of the lowest, if not the lowest, salary structures in corporate America," he said. The deals have "allowed us to build wealth over time."

Messrs. Magness and Malone are paid a bit under $500,000 a year each and control a combined 36% of shareholder votes in TCI. When TCI spun off some assets into a company called Liberty Media Corp.—a more designed to answer charges that TCI had become too dominant—the two executives quickly acquired 56% of the voting shares of that company, too. The market value of their combined holdings is nearly $700 million.

The accumulation of that wealth and the sheer girth of TCI will undoubtedly draw the interest of the U.S. Senate this week, as lawmakers begin debating whether the cable industry has become monopolistic and whether additional regulation is needed. TCI and Liberty Media operate in 48 states and dwarf their next-largest rival, Time Warner Inc. TCI alone generates cash flow of $1.7 billion a year—more than ABC, CBS, NBC and the Fox network combined. Annual revenue approaches $4 billion. TCI and Liberty owns stakes in four of the top 10 cable channels and have an interest in nine of the top 25, including Cable News Network, Turner Broadcasting System, Turner Network Television, the Discovery Channel and Black Entertainment Television.

The company's critics say TCI's vertical integration—ownership of both the local cable systems and the channels that provide programming for those systems—gives it unfair power and is one of the best arguments for greater regulation of the industry. The company's outside shareholders, however, couldn't be happier. A dollar invested in TCI stock in the mid-1970s is worth more than $800 now. TCI has "given us a tremendous return," says Keith Hartman, with Associated Communications Corp., an investment company in Pittsburgh. Associated's $7 million investment in TCI in 1979 has swelled to well over $300 million. If TCI were sold today it would probably fetch at least $15 billion.

No shareholder has benefited more than Bob Magness, a cigar-chomping, roughhewn rancher who started TCI with the purchase of a single system in Memphis, Texas. At age 68, he is worth over $500 million. For all his wealth, Mr. Magness eschews the life style of the rich and famous. For two decades he has lived in a modest ranch house atop a plateau overlooking Denver. "You go to his house for dinner and everyone takes his shoes off, more or less," says Rudy Wunderlich, a friend. The cable magnate has been known to shift a cigar to a corner of his mouth, resting it there while eating a T-bone steak. "He ain't very happy in a tuxedo," another friend says.

These days, Mr. Magness spends little time on TCI's day-to-day affairs. He raises horses and collects Western art, passions he pursued with his first wife and business partner, Betsy. She died in 1985, and he has since remarried.

He formed his cable company in 1956. As lore has it, Mr. Magness, a short and rugged Oklahoman, sold some cattle for funds to buy the franchise in Texas. (A franchise is the right to build and operate a cable system, and is usually awarded by local authorities.) From there, he and Betsy began collecting cable systems in Montana, Nevada, Colorado and Utah.

FINDING SUPPORT

By the mid-1960s, Mr. Magness needed backers. He found two in Salt Lake City—the Gallivan family, which owns the local newspaper, Salt Lake City Tribune, and the Hatch family, owners of local television station KUTV. (The family isn't related to that of Sen. Orrin Hatch.)

The investment by the Hatch family would prove problematic years later, when the federal government barred "cross-ownership" of local TV stations and cable systems in the same community. But with the families' help, Mr. Magness incorporated TCI in 1968 and took it public in 1970.

By 1973, though, TCI was flirting with bankruptcy: Mr. Magness, it seemed, lacked the skill to build and manage TCI as a modern enterprise. So he turned to Mr. Malone, a young Connecticut native and Yale-educated financial virtuoso who was then the president of a TCI supplier.

Shortly after taking over as TCI's president, Mr. Malone summoned TCI's impatient lenders to a meeting, the story goes, and gave them an ultimatum: either back off or take over the company. The lenders backed off, and TCI was able to refinance. Its quest for expansion resumed, fueled by mountains of new debt.

Today, Mr. Malone, age 50, is cable's most visible and formidable figure. He crafted the industry's $560 million rescue of Ted Turner's debt-laden business in 1987, which enabled TCI to gradually take a 25% stake in Turner Broadcasting System Inc.

Yet for all of his influence, the soft-spoken, Mr. Malone remains a stranger to many in the field. Says cable broker Bill Daniels, who shares a skybox atop Denver's Mile High Stadium with Mr. Malone: "I just don't know anyone close to him."

Mr. Malone, who holds two master's degrees and a doctorate in operations research, has served as TCI's strategic thinker and financial alchemist, deftly managing the company as a portfolio of cable assets and buying, shifting, marrying and decoupling them in ways that boosted their value. More than any other industry executive, Mr. Malone pulled the financial community onto the cable bandwagon, getting Wall Street to focus on the business's surging cash flow.

But that higher profile had a downside: it increased the chances that TCI might become a target of corporate raiders.

That risk grew in 1979 as Salt Lake City's Hatch family prepared to sell off its sizable stake in TCI to comply with the ban on cross-ownership. "With the Hatches gone, [Mr. Malone] felt the company was more vulnerable," says James Hoak Jr., a former executive at Heritage Media, a TCI-owned group of cable systems.

What to do? TCI started to address the problem in 1979 by creating a new class of stock, Class B shares, that had 10-to-1 voting power over the more widely held Class A shares. Now TCI had only to find a way to get the bulk of the Class B shares into friendly hands—such as those of Messrs. Magness and Malone.

Thus began a series of transactions so complex they almost seemed designed to befuddle. First, the Hatch family's TCI stake was acquired by an investment concern called Tele-Communications Investment Inc., which after the transaction controlled 24% of TCI Class B voting stock and 43% of the weaker Class A shares. Through a previous transaction, TCI owned half of that investment company, so TCI's management thus controlled half of the investment company's vote. But TCI management apparently was looking for a way to gain an even tighter grip on TCI.

Messrs. Magness and Malone embarked on a bout of labyrinthine self-dealings that ultimately would have TCI pay them a huge chunk of the super-voting shares. In one case, the dealings involved four separate companies with almost the exact same name—two owned by Messrs. Magness and Malone, two owned by TCI—and the swapping of Utah cable franchises and systems among them.

BACK AND FORTH

Acting through small subsidiaries, TCI first bought up franchises around Salt Lake City. Then TCI transferred the franchises—it isn't exactly clear how—to separate Magness and Malone companies with almost the same names as the TCI units. Later, TCI bought the Magness and Malone entities—even though TCI had owned some of the franchises in the first place.

The price: nearly one million of the super-voting Class B shares, which TCI paid to Messrs. Magness and Malone over five years. The stock, amounting to 13% of all shareholder votes by early 1991 and worth about $140 million at the time, essentially gave the two top executives enough voting power, when added to their existing stakes, to block any move they didn't like.

Records don't make it clear, but it appears the transactions could have gone one of at least two ways: Messrs. Magness and Malone paid only a small sum for TCI's Utah franchises and sold them back at a huge profit; or the pair received the franchises free and sold them back to the company. Either way, the transfers weren't disclosed to the Securities and Exchange Commission.

What is known about the transactions is this:

The deals began in 1979. Because of the cross-ownership ban, and because the Hatch family stake in TCI hadn't yet been sold, TCI couldn't pursue any new cable systems in the Salt Lake City market, the company said in public filings. TCI nonetheless wanted the unawarded Utah franchises in "friendly hands," Mr. Malone recalled in an interview.

So the TCI board urged Messrs. Magness and Malone to form their own private company to pursue the Utah franchises, with the idea that TCI would ultimately buy the properties from the executives. They and their immediate kin set up a new entity: Community Cable of Utah Inc.

APPLYING FOR FRANCHISES

TCI, it turns out, had a subsidiary that used that same name as a trade name. Through last subsidiary, and despite the ban on cross-ownership, TCI had already

applied for and received quite a few Utah cable franchises, government records show.

For example, in 1979 the towns of Spanish Fork, Sandy, Salem, and Payson City all awarded franchises to a TCI subsidiary known as Community Cable of Utah Inc. But this Community Cable of Utah, records show, was registered in Nevada. The Magness and Malone-owned Community Cable was incorporated in Utah and was, legally, a separate and unrelated entity.

All of these franchises, however, would end up belonging to Messrs. Magness and Malone. Records don't make clear how this happened.

In February 1981, after the Hatch family stake in TCI had been sold, TCI acquired Messrs. Magnese and Malone's Community Cable of Utah, paying them and their family members 360,000 Class B shares of TCI. The company's assets, listed in disclosure documents, included at least one of the very same franchises and the system built under it—Sandy—that TCI's Community Cable unit had acquired a few years earlier. The assets also included 260,000 shares of Class A stock.

TCI executives give contradictory accounts of how TCI's Sandy franchise ended up as the property of Messrs. Magness and Malone. First, Bernard Schotters, a TCI spokesman, said the franchise had belonged to the two executives to begin with, but that Sandy officials insisted on naming the TCI subsidiary as the official owner.

Then, he and another spokesman, Robert Thomson, revised the explanation to say that TCI, indeed, had first owned the Sandy franchise, but had "assigned" it to another Magness and Malone entity, Community Television of Utah. In return, Messrs. Magness and Malone "paid" TCI by granting TCI the right of first refusal to buy the Sandy property back.

But local records show that Community Television of Utah isn't owned by Messrs. Magness and Malone—it is yet another unit of TCI. The various explanations, moreover, contradict a filing TCI made with Sandy officials in the late 1980s: In it, TCI said it had received the Sandy franchise back in 1979, when TCI was telling shareholders that it was federally barred from doing so because of the crossover restrictions. Today, in explaining its past actions, TCI says it was wrong to tell shareholders that it couldn't own a franchise; in fact, TCI says, it was permitted to seek a franchise, but not to own and operate the cable system built under the franchise.

TCI and its two top officers and their families, who now were flush with the additional 360,000 Class B shares, then repeated the self-dealing. What they gained, again, was greater control of TCI itself. Here's how it worked:

In selling their Community Cable to TCI, the two men held back five cable systems covering 12,000 homes in central Utah. TCI never identified the specific systems in public filings. But records indicate they were the franchises that had been granted to TCI's Community Cable of Utah through a 100%-owned TCI unit. In any case, Messrs. Magness and Malone now owned them and shifted them into yet another new entity with the same name, TCI says today. This version of Community Cable of Utah was registered in Colorado.

In April 1983, they exchanged the five systems for a 21% stake in a new TCI company formed to make acquisitions. TCI valued the assets of their Community Cable of Utah at $3.8 million. The acquisition company, meanwhile, went on to buy another cable system.

In December 1985, TCI bought out the two men's stake in the acquisition company. The price: 600,000 shares of Class B stock in TCI, worth almost $23 million. On the same day, TCI paid them another 50,000 Class B shares, valued at $1.9 million, to acquire another 21% stake the two men had in yet another TCI entity, which had purchased a cable system in Buffalo, N.Y. That 21% stake had cost the two just $210,000 only a year earlier, according to TCI proxy statements.

TCI's two spokesmen, Messrs. Thomson and Schotters, provide contradictory explanations for the turn of events.

First, Mr. Schotters said TCI itself obtained most of the live Utah franchises in question—despite TCI's earlier claim, in proxy statements, that it wasn't allowed to do so. He said TCI, it turns out, was allowed to seek franchises—it just couldn't build and own the systems. Messrs. Magness and Malone did the building outside of the TCI corporate umbrella with TCI financing, he said. But he added that TCI isn't sure whether it ever transferred ownership of the systems to the two men.

Later, the TCI spokesmen said the Magness and Malone company had been awarded at least two of the franchises involved by Utah authorities. But local records show all five Utah franchises were directly awarded to TCI's subsidiary. TCI can't explain whether it transferred the rights to its top two executives—or when, or for what price.

Combined and adjusted for stock splits, the more than one million Class B shares that TCI paid Messrs. Magness and Malone over the years became 10.5 million Class B shares as of January 1991—before Liberty Media was spun off—with almost $140 million and equal to about 13% of all TCI shareholder votes.

Today the Magness and Malone combined holdings give the two veto power over any decisions at both TCI and Liberty Media, thanks in part also to substantial payment of Class B shares they've received under their employment contracts.

PLAYING TOUGH

As the two men built their empire, leaving behind this maze of dealings, they were slowly developing a reputation for hardball tactics with local governments and rivals. Six years ago, for example, TCI began waging war on Morganton, N.C., population 28,000.

The battle was over the company's cable franchise in Morganton, which was expiring and which the town council decided not to renew. Service was "atrocious," Mayor Mel Cohen charges today, and the town began studying whether to build its own cable system.

TCI argued that government ownership would be illegal and countered by suing Morganton, asking $35 million in damages. The town won, but TCI has been appealing the decision ever since, continuing to collect $1.3 million a year in local cable revenues. At one point, TCI offered to sell the system to a buyer group. But the town balked after learning one of the buyers was partly owned by TCI.

Then last year, TCI hired a lobbying firm that formed "Citizens Opposed to City-owned Cable." The group gathered petition signatures to force a vote by citizens on whether the cable system should be owned privately or by the government. Morganton officials contend there was a catch: The petition included a measure—drafted by TCI—that would have virtually guaranteed TCI a lifetime franchise if the vote was in favor of private enterprise. The local board of elections rejected it, and another court battle was on.

Undeterred, TCI targeted Mayor Cohen and an incumbent town councilman for defeat in elections last Oct. 8, the mayor says. The TCI-funded citizen group ran as many as three newspaper ads a day in the three weeks preceding the election. One pictured two buzzards sitting on an electric line and read: "Morganton politicians are sitting high on the perch."

WINNING THE ELECTION

All told, TCI spent about $144,000 on the campaign—dwarfing the $400 to $600 the incumbents say they each spent to get re-elected. In the end, the mayor and the councilman both were re-elected.

TCI's Mr. Thomson generally confirms the events in Morganton but says he expects the two sides to settle the dispute. "We anticipate calmer heads will prevail," he says.

TCI has played a similar form of hardball with its rivals. Its source of power lies in the fact that the sheer size of its systems can make or break a new channel—and keep a rival channel from reaching many American households. That size also gives it enormous leverage in demanding lower prices from independent channels.

The company's move into programming began in earnest in 1979 when it invested $180,000 in a start-up called Black Entertainment Television. From the mid-1980s on, TCI acquired stakes of 5% to 50% in American Movie Classics, the Discovery Channel, the Family Channel, and Turner Broadcasting and its three cable outlets, Cable News Network, Turner Network Television and Superstation TBS.

Critics say TCI displayed its power last year when it fought to win control of the Learning Channel, an award-winning educational channel that was 51%-owned by troubled Financial News Network Inc.

FNN was bound for bankruptcy-court proceedings, and it put the Learning Channel up for sale. Several bidders emerged, including the Public Broadcasting System, the Lifetime cable channel—and Discovery Channel, 49%-owned by TCI.

Initially, analysts estimated the Learning Channel might be worth $80 million or more. But as FNN's woes worsened, offers dropped. Lifetime offered $40 million, outbidding TCI's Discovery, and began negotiating a final deal. Then TCI elbowed in. TCI's Mr. Malone suddenly decided that the Learning Channel had declined in quality, and he ordered TCI's local cable systems—which accounted for as many as one-third of the channel's total subscribers—to dump the service.

That, of course, made the Learning Channel a less attractive property to the bidders at Lifetime, which is owned by Capital Cities/ABC Inc., Viacom Inc. and Hearst Corp. Executives from Hearst and ABC descended on Mr. Malone in Denver and pleaded with him to keep the Learning Channel on TCI systems, according to officials with Lifetime. They outlined plans to improve the channel and pledged to freeze the rate paid by TCI systems for the channel for two years.

But Mr. Malone said TCI couldn't promise it would carry the redone channel if the sale went through, according to people familiar with the meeting. Today Mr. Malone says he had worried that a bankruptcy judge might force TCI to continue carrying the channel. He also says that, in his opinion, Lifetime's revival plans weren't firm. "We wanted to put them on notice that we have no obligation to carry" the channel, he says. He also said TCI was concerned that the Learning Channel would raise its rates after it was acquired by Lifetime.

Lifetime soon abandoned its bid. A short-time later, the Learning Channel got an-

other buyer—TCI's Discovery Channel, which snapped up the Learning Channel for $31 million. After making some programming changes, TCI decided it was fine after all, keeping it on many, though not all, TCI systems. TCI's chief operating officer, J.C. Sparkman, says that TCI "had nothing to do with whether Lifetime or Discovery" acquired the Learning Channel, and that TCI did nothing untoward during the bidding.

SKEWING ON THE SYSTEM

Another rival has also complained about TCI's extensive control over both the medium and the message. Home Shopping Network's chief executive, Roy M. Speer, charged in testimony to congressional subcommittees last year that TCI "systematically refuses" to carry Home Shopping on TCI systems because of its own sizable stake in a rival channel, QVC. (Liberty now holds the QVC stake.)

Home Shopping managed to sign up only 3.7% of TCI's subscriber base, although its sign-up rate was 47% for most other top cable operators, the service said in a 1990 filing with the Federal Communications Commission. Home Shopping said TCI was thus depriving it of hundreds of millions of dollars in revenue and was increasing its costs.

Mr. Speer declined to be interviewed. But in his testimony he detailed years of alleged discrimination by TCI. TCI's Englewood, Colo., system once told Home Shopping it couldn't carry the network because it competes with QVC, Mr. Speer said. In 1988, TCI directed two systems it had acquired in Pasco County, Fla., to cancel Home Shopping and replace it with QVC, he said. In April 1990, TCI's top California manager told Home Shopping there was "no way" his systems could carry it, given that TCI had a stake in QVC, Mr. Speer charged.

TCI denies it discriminates against Home Shopping but declines to comment further. In a letter last summer to Sen. Daniel K. Inouye of Hawaii, TCI said it believes it is Home Shopping's largest carrier, accounting for one-quarter of Home Shopping's viewers.

The fortunes of QVC, meanwhile, are soaring. While Home Shopping Network posted an $8.9 million loss on one-time charges in its most recent fiscal year, QVC reported almost $5 million in profit in the first half on $391 million in sales, which were up almost 22%.

If TCI can be hard on rivals, it sometimes is no more gentle with consumers. Last summer it launched Encore, a low-priced movie channel, using the "negative option"—subscribers all had to pay extra for it unless they explicitly told TCI they didn't want it. The company figured that putting the burden on customers to say no promised to corral 80% of TCI households for Encore. It also says it had to use the strategy because of technical limitations in many of its cable systems. A Texas newspaper called the strategy "sneaky," others said it was anti-consumer, and a judge halted it. At least 10 states sued, and TCI had to abandon the gimmick nationwide.

But the setback was something of an exception. Usually TCI gets its way. In 1985, for example, when General Electric Co.'s NBC network set plans for an all-news cable channel, officials assumed it "couldn't happen without TCI," recalls Lawrence K. Grossman, president of NBC News at the time. But in the end, TCI merely played NBC off against CNN, whose programming the cable company was already carrying. According to Mr. Grossman, TCI used a proposed alliance with NBC to get price breaks from CNN, and then backed away from the NBC proposal.

Several years later, NBC tried again. By this time, TCI had taken a stake in Turner Broadcasting. To win TCI's support, NBC promised that its new channel, CNBC, would focus on business and finance instead of running an all-news format that would compete with Cable News Network, say people familiar with the transaction. NBC also agreed to pay TCI $20 million for a fledgling TCI channel called Tempo. Sen. Gore, in a 1989 Senate hearing on media ownership, called that payment a "shakedown" by TCI.

NON-COMPETE PROVISION

NBC Chairman Robert Wright and TCI scoffed at the shakedown allegation, and TCI denied it had forced NBC to avoid competing with CNN. But Mr. Wright testified that most cable companies "required, if you will," a non-compete provision and said it "wasn't exactly what we would have preferred." TCI and NBC have since joined in several business ventures.

Afraid that TCI's dual role in owning cable systems and channels would prompt the federal government to try to break up the company, Messrs. Magness and Malone conceived a plan that would appear to do just that—while letting them retain total control of the empire.

Last year TCI spun off $605 million of assets in the form of a new company, Liberty, and sold Liberty to TCI shareholders by giving them the option of swapping some of their TCI shares for shares in the new company. But TCI set up Liberty as a second vertically integrated company with cable systems of its own.

What's more, Liberty purports to be an independent company, but it employs mostly TCI people, has Mr. Malone as its chairman, and has five TCI executives on its board of six directors.

"This so-called spinoff should be renamed 'All in the Family,'" said a critical staff report to the Senate Commerce Committee.

Liberty shares have more than tripled in price from an original $230 to $770 a share in less than a year of trading. The swift rise has some analysts wondering whether the appreciation is warranted. "It is ridiculously overvalued," contends Frederick A. Moran, president of Moran Asset Management Inc., a money management company. He recently advised clients to dump Liberty shares.

Messrs. Magness and Malone own 56% of Liberty's shareholder votes and were able to grab such a dominant stake because many other shareholders in TCI didn't elect to participate in the swap.

EXPANDING INFLUENCE

Under Mr. Malone's control, Liberty has been especially generous to him; he owns 164,000 shares worth $126 million. Records show he obtained 100,000 Liberty shares through options in lieu of salary in one fell swoop, even though his contract at the time limited him to 20,000 shares a year for the next five years. In October, Liberty directors let Mr. Malone exercise all of the options at once.

Exercising the option cost Mr. Malone $25.6 million, but he had to put up only $100,000 in cash, according to Liberty filings with the SEC. Moreover, Mr. Malone raised the money by selling part of his personal stake in Liberty's QVC channel back to Liberty. He gave the company a $25.5 million note for the rest of the stock, with a low annual interest rate of 7.54%. Mr. Malone later paid off part of the debt by giving Liberty some of his TCI stock.

To lessen their risk when Liberty was spun off, Messrs. Magness and Malone structured the deal to insulate themselves from any losses, even if it meant damaging Liberty itself. Under the terms they set—which weren't available to Liberty's outside shareholders—Liberty must arrange the purchase of stakes held by the two executives and the Gallivan family, the early TCI backer, at a guaranteed price if these shareholders are ever forced by regulators to divest. The guaranteed price is an average of the stock's price over a specific trading period.

"The actions [Liberty] may be required to take in order to satisfy such obligations . . . could have an adverse effect on the company's business, financial condition and prospects," the company warned in SEC filings.

Mr. PRESSLER. If a monopoly such as that owns a portion of the shopping network, what is to prevent it just adding to its monopoly? How would my colleague deal with the monopoly issue? The cable monopoly would never allow any other shopping network onto its system if they owned a portion or had some economic relationship with another shopping network. This is exactly what they are doing now in many systems.

Mr. BREAUX. My amendment does not in any way affect antitrust laws. We do not amend the Antitrust Act. Nothing is changed in existing antitrust laws. If they are violating antitrust laws by doing that now, they will be violating it after my amendment. I suggest that a cable company would put a competitive home-shipping type of program on if the public demanded it, if they thought they could make money doing it. If they thought they would not make money doing it, they would not put it on. Nothing in my amendment affects antitrust laws. If it is illegal today, it would be illegal after the amendment is adopted.

Mr. PRESSLER. Nothing in the amendment affects the antitrust laws, that is true, but under the current system a monopoly has complete control to block out anybody else. That is exactly what is happening. I suggest to my friend that, indeed, this amendment will add to the monopoly problem.

Mr. BREAUX. If that is illegal today, it would be illegal tomorrow. If it is legal today, it is still legal after my amendment. My amendment does not affect that. If what they are doing is an antitrust violation, it is illegal and they should be prosecuted for it, but this amendment does not touch that.

Mr. PRESSLER. Mr. President, in conclusion, I am in disagreement with my friend on that point because I think his amendment will add to the monopoly problem substantially. The large cable companies which own a part of shopping networks will just allow those networks on the air, and, unless S. 12 passes, other competitors do not have a chance. There would be no competition. I am also totally puzzled by the stand of the Consumer Federation of America. It seems to me that the more competition, the more alternatives for the consumers. I yield the floor.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I think the arguments against this amendment have been pretty well made. I do not know whether Senator GRAHAM, of Florida, intends to offer a second-degree amendment or not. I strongly oppose the present amendment in the form it takes right now for the reasons already given by other Senators.

First of all, in connection with the colloquy just engaged in by Senator PRESSLER and Senator BREAUX, I am not sure how efficacious the antitrust laws are under this situation. I am a long way from practicing law and much less antitrust law. I am not sure that a unilateral refusal to deal would constitute a good antitrust case.

But in the point of fact what is being done right now and what was pointed out by the Wall Street Journal article that was just put in the RECORD is a very real problem. It is a problem which does lock out a competitor in the home shopping area. TCI, which is the largest of the cable companies, according to the article in the Wall Street Journal, " 'Systematically refuses' to carry Home Shopping on TCI systems because of its own sizable stake in a rival channel, QVC." That is the quote from the Wall Street Journal article.

So in point of fact without must-carry applying to the home shopping stations, the home shopping stations will have no access to TCI cable companies. I do not know if they have a good antitrust case or not. I do know that even the best antitrust case takes years to get through the courts.

The second point, which is a broader point and a very important point, does have to do with content regulation and does have to do with whether we on the floor of the Senate want to make qualitative distinctions among various kinds of TV programming. Do we want to say that if there is such a thing as must-carry, then that must-carry privilege extends to certain kinds of television content and not to other kinds of television content? That is what this amendment would do. It would say that there is certain content of television programming that we do not like and that we want to treat differently from other kinds of television programming. That, to me, is a highly questionable process for the Senate to enter.

For those two reasons, I oppose the amendment that has been offered by the Senator from Louisiana.

Mr. BREAUX. Will the Senator yield for a question? The Senator raised the question, and I think the Senator from South Dakota also referenced TCI company which is Telecommunications, Inc. This issue, as both Senators will remember, was raised in our hearings in the committee. The question I would like to ask is that the information I have—it may be the Senator's information is different. If it is, I think we ought to have it on the record. The letter from TCI to Senator PRESSLER says:

> We believe TCI is Home Shopping Network's largest cable affiliate. Home Shopping Network has access to over 60 percent of the TCI subscribers. On TCI's owned and operated system and on the Storia system that TCI manages, Home Shopping Network programming may be seen by 3.5 million subscribers out of a total of 6.8 million.

That is, 60 percent plus of TCI subscribers get Home Shopping Network. The reference was made on the floor that somehow TCI is preventing Home Shopping Network from competing on their system. This letter says just the opposite, that 60 percent of the TCI subscribers get Home Shopping Network over their cable system. Is that incorrect information?

Mr. DANFORTH. Mr. President, responding to the Senator, I can simply read from the Wall Street Journal article, which has been placed in the RECORD. And I will read the article.

This is a quote:

> Another rival has also complained about TCI's extensive control over both the medium and the message. Home Shopping Network's chief executive, Roy M. Speer, charged in testimony to congressional subcommittees last year that TCI "systematically refuses" to carry Home Shopping on TCI systems because of its own sizable stake in a rival, QVC. (Liberty now holds the QVC stake.)
>
> Home Shopping managed to sign up only 3.7% of TCI's subscriber base, although its sign-up rate was 47% for most other top cable operators, the service said in a 1990 filing with the Federal Communications Commission. Home Shopping said TCI was thus depriving it of hundreds of millions of dollars in revenue and was increasing its costs.
>
> Mr. Speer declined to be interviewed. But in his testimony he detailed years of alleged discrimination by TCI. TCI's Englewood, Colo., system once told Home Shopping it couldn't carry the network because it competes with QVC, Mr. Speer said. In 1988, TCI directed two systems it had acquired in Pasco County, Fla., to cancel Home Shopping and replace it with QVC, he said. In April 1990, TCI's top California manager told Home Shopping there was "no way" his systems could carry it, given that TCI had a stake in QVC, Mr. Speer charged.
>
> TCI denies it discriminates against Home Shopping but declines to comment further. In a letter last summer to Sen. Daniel K. Inouye of Hawaii, TCI said it believes it is Home Shopping's largest carrier accounting for one-quarter of Home Shopping's viewers.
>
> The fortunes of QVC, meanwhile, are soaring. While Home Shopping Network posted an $819 million loss on one-time charges in its most recent fiscal year, QVC reported almost $5 million in profit in the first half on $391 million in sales, which were up almost 22%.

That is really all I know. I would say that however the facts turn out, without having must-carry available to Home Shopping, the fate of Home Shopping is really in the hands of TCI or other cable companies. And, therefore, it is a matter of simply relying on the good graces of the cable operator.

I might say as a general rule that those who say that we should not pass this legislation, that there should be no possibility of regulating the cable companies or no meaningful possibility of regulating the cable companies, are saying very much the same thing. They are saying that cable companies should be trusted; that cable companies will do the right thing without being hemmed in in any way either by competition or by regulation.

I think that the story in the Wall Street Journal 2 days ago shows what all of us know intuitively, and what all of us know intuitively is that if there is a monopoly that is unregulated, that monopoly is going to be abusive. That is what is at stake, I think, in this amendment.

Mr. BREAUX. Of course, that is the whole thrust of the bill of the chairman and the ranking minority member—to regulate cable companies. I am all for a degree of regulation. I think it is appropriate. But the point about Home Shopping Network not being able to make it without must-carry, I ask the Senator, the figures when we had them before the committee showed that they had grown from net sales of $160,000 in net sales in 1986 to nearly $1 billion in net sales in 1990. They did that without must-carry.

Before we start crying for Home Shopping Network not having must-carry, they are doing very well. I think the Senator would have to agree with those kind of net sale figures. That is without must-carry.

Mr. DANFORTH. Of course this is disputed in the article that I just read from. I would simply say that it is an abuse, in the opinion of this Senator. It is an abuse for a cable operator to be able to say we will accept a program from our affiliate company, QVC, and run that on our cable, and we will exclude a competitor.

For those who believe, as I believe, that competition is the real answer, not regulation, the point is we should open the door for competition. And under the present state of affairs, competition can be precluded by the operation of the cable company.

It is not the intention of the sponsors of this legislation to regulate for the joy of regulation. That is not the intent. As a matter of fact, under the law that we have, the ability of a municipality to regulate rates sunsets if there is another multichannel provider.

Similarly, the whole reason for providing in the legislation what is not provided in the substitute, namely for nondiscrimination in the case of vertical integration, and the case of providing some limits on horizontal expansion by cable companies—the whole purpose of those provisions which are in the bill and not in the substitute—is to increase competition and to provide for a vital competitive system.

Some people who claim that they are taking the conservative position by being against any and all regulation, it seems to me, myself, therefore, say that what they are for is a competitive marketplace. But if we end up passing legislation that does not further the cause of a competitive marketplace and which has a severely stunted regulatory system such as in the proposed substitute, they are asking for a system which is simply a continuation of the status quo, namely unregulated monopoly.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, I would like to point out that the letter sent to me, also, I believe, says that a subsidiary of TCI owns over 20 percent of QVC. It is true, as my friend says, that TCI does carry Home Shopping on many of its affiliates. But the point is wherever they want to control, they can exercise their monopoly power. They can, and they do.

I think this is the significant point that we must remember.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

Mr. BREAUX. Mr. President, I rise because I thought that there were other speakers on the amendment who are on the floor.

Mr. PRESSLER. Mr. President, I wish to speak on the main bill. I have a short statement if I can do that.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Does the Senator seek recognition?

Mr. BREAUX. I seek recognition.

Do other Senators seek to speak on the amendment?

Mr. BURNS. Mr. President, I have a short comment on this amendment.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I would just, in this debate on this particular amendment, say I am supportive of the amendment as it is offered by the Senator from Louisiana. Whenever you take a level playing field, and whenever we start talking about regulation and deregulation and this type of thing, I would say then QVC would, under the must-carry rule, have sort of the best of both worlds.

They have over-the-air shopping, and have been allowed to take advantage of the cable operation as well. Maybe we would have to go out, and if Home Shopping Network wanted to purchase a station, they could not be denied the purchase of that station just because of content.

I am a broadcaster, and I think probably we went through this same debate whenever we were talking about children's TV, that there were many of us in the Congress that did not like 30-minute-long commercials. In both—the children's programming and the commercials—the program content was just basically one long commercial.

I just do not believe that this fulfills the traditional and accepted format of broadcasting as we know it in this country; in other words, offering local broadcast news, weather reports, emergency conditions, and items like this that broadcast companies usually offer to a community.

So I support the amendment, because of the fact that I have a big problem with seeing not only 30-minute-long commercials but also hour-long commercials, and it would probably disrupt the traditional broadcast as we know it in our own local communities.

I congratulate the Senator from Louisiana for the amendment, and I yield the floor.

Mr. BREAUX. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I rise for the purpose of explaining a second-degree amendment that I will offer. I want to give an explanation before offering it.

Mr. President, the issue here is who should decide on the appropriateness of an FCC licensed over-the-air station, to secure the benefits of the must-carry provisions in S. 12.

The amendment which has been offered says that decision should be made by the cable operator under a potentially economically discriminatory set of circumstances. That is, that the cable TV operator could elect to allow one or more, but not all of the programs that have a similar, predominantly advertising, format to their content.

I believe that that clearly raises the specter of; A, economic discrimination by the cable operator to the benefit of a cable channel or over-the-air channel, with which they have an economic tie; B, involves the Congress in a very serious issue of content determination beyond that which has already been reached by the FCC.

Therefore, Mr. President, I will offer a second-degree amendment which would direct the FCC within 90 days to commence the process of reviewing broadcast television stations—whose programming consists predominantly of sales presentations—to determine whether they are serving the public interest, convenience, and necessity. The Commission shall take into consideration in the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are not serving the public interest convenience, and necessity, the Commission shall allow the licensees of such stations as reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy due to their prior programming.

AMENDMENT NO. 1503 TO AMENDMENT NO. 1502

(Purpose: To require an inquiry by the Federal Communications Commission concerning broadcast television stations whose programming consists predominantly of sales presentations)

Mr. GRAHAM. Mr. President, I believe that this amendment would keep this issue where it should be, and that is before the FCC, which will be applying a consistent, not an economically discriminatory, standard. Therefore, I send to the desk a second-degree amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. GRAHAM] propose an amendment numbered 1503 to Amendment No. 1502.

Mr. GRAHAM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

USE OF CERTAIN TELEVISION STATIONS

SEC. . Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry to determine whether broadcast television stations whose programming consists predominantly of sales presentations are serving the public interest, convenience, and necessity. The Commission shall take into consideration the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy due to their prior programming.

Mr. GRAHAM. Mr. President, the amendment is as I described it. It directs the FCC to commence an inquiry to determine whether broadcast television stations which consist predominantly of sales advertising are serving the public interest, convenience, and necessity, and provides for steps that would be followed, should the FCC—in a consistently applied administrative procedure, subject to judicial review—reach a determination that those standards of public interest, convenience, and necessity are not in fact being maintained.

Mr. BREAUX. Will the Senator yield for a question?

Mr. GRAHAM. Yes.

Mr. BREAUX. This amendment says basically that the FCC shall make an inquiry whether the stations are meet-

ing the public interest, convenience, and necessity test.

Is it the intent of the Senator in offering this that that inquiry shall make a determination that they are in fact meeting that test and describing how they are meeting that test?

Mr. GRAHAM. The FCC, under its standards of licensure, will make a judgment as to whether the station is serving the public interest, convenience, and necessity on the basis upon which stations are licensed. If a station is found to meet those standards, then it would qualify as a must-carry station under the provisions of S. 12.

Mr. BREAUX. If the Senator will yield, this is the point I am making on the amendment: is it the interpretation of the author that they can come back and say yes, without spelling out how they are meeting the public interest, convenience, and necessity.

Mr. GRAHAM. The FCC has, as a core part of its responsibility, to make judgments under congressional authorization, as to which licensees meet those standards of public interest, convenience and necessity, and they would be required under this inquiry to determine—determine being a word of administrative and legal significance—to make a determination that a station whose programming consists predominantly of sales presentations are meeting the public interest, convenience, and necessity test. The answer to the question is yes.

Mr. BREAUX. Would the author of the amendment agree to a unanimous-consent amendment to his amendment which would say after the word necessity: "and how they are doing so"?.

Mr. GRAHAM. I think that is subsumed in the word determine. The FCC has to make a determination, which is a legal finding, that a station which consists predominately of sales presentation is serving the public interest, convenience, and necessity.

Mr. BREAUX. So it is the author's intent that it would be a requirement that they would spell out what they are doing that meets these public tests?

Mr. GRAHAM. That they would make a determination, as they would in any other case of making such a finding, and that it would be a publicly arrived at and a publicly available statement of the basis upon which they would reach that judgment.

Mr. BREAUX. Mr. President, this amendment completely eliminates my amendment. Of course, I am sure that is the intent of the author to do that. It is not surprising, and I respect him for it.

The problem with the amendment of the Senator from Florida is that this FCC, as lackadaisical as they have been in approving broadcast licenses, has already made that determination. They made the determination that these stations that do nothing but broadcast commercials 23 hours a day are meeting the public interest and necessity test. That is how they got the license in the first place. That is the problem.

The FCC has already approved the licenses for these local broadcast stations, allowing them to do nothing but broadcast commercials 23 hours a day; and in order to give them the license, they had to make the determination that they are meeting the public interest and necessity test. This FCC has already done that. And that is the reason why we have a problem. I suggest that a television station that uses the public air waves is supposed to meet the public interest tests and public necessity test, because it is the public air waves, and it is not meeting that standard when the only thing they do is broadcast commercials 23 hours out of a 24-hour period.

My amendment says that at least do not elevate them further by giving them must-carry status. We should not say that a station that does not have weather, does not have sports, does not have local news, does not have national news, does not have international news, stock market reports, music, any kind of discussion of any type of value other than we are selling these rings, and these dresses, and suits, and shoes, should have to be elevated to a must-carry status. Should a cable company have the right to carry them if they want to? Of course. Does my amendment prohibit them? Of course, it does not.

What we are doing now is saying, without my amendment, that a cable company absolutely has to carry a station that does nothing but broadcast 23-hour-a-day commercials, even if that means that they will have to knock out other programming that has valid entertainment or public value.

I just think that when you see the Consumer Federation of America saying how concerned they are that these full-time home shopping stations would be elevated to must-carry status, that is wrong. I think that is why you see these groups that do not have any economic interest in this battle supporting this amendment.

We could argue all day long about the three broadcast networks that have these home shopping networks. But we all know, quite frankly, they are making millions of dollars doing this. Some what to put the others out of business. They want to be the only survivor.

When you have interest groups that have no economic dog in this fight, like Consumer Federation, you see that we truly are talking about the public interest. And the public interest is served by saying that they should not be elevated to must-carry status.

With all due respect to my good friend from Florida, who says I am going to offer a substitute that will require the FCC to make this determination as to whether these stations meet the public interest and necessity test, this FCC—which so many Members have severe complaints about, which is the reason why we have a cable bill up here for many Members—is not qualified to make that decision.

They have already made it. They said that is a public interest and necessity station that meets all the requirements. I would like to see them specifically tell this Senator and all of us how a station that does 23 hours a day of commercials, interspersed with one 60-minute slot on heartworms and a veterinarian's recommended cure, is meeting the whole public interest and necessity test.

Is this what public interest is all about? I suggest that it is a lot more than that and, therefore, the substitute amendment should be defeated.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I support the second-degree amendment offered by the Senator from Florida. I think it is the more prudent way to proceed, to allow the FCC to study this matter, rather than adopting the Breaux amendment which I think is a big step toward content regulation.

I ask for the yeas and nays on the Graham amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

AMENDMENT NO. 1503, AS MODIFIED

Mr. GRAHAM addressed the Chair.

The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent to modify the amendment which I have submitted in the form that is currently at the desk.

The PRESIDING OFFICER. The Senator has a right to modify the pending amendment.

The amendment (No. 1503), as modified, is as follows:

In the pending amendment, on line 2 beginning with "nothing" strike through line 7 and insert the following:

Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry to determine whether broadcast television stations whose programming consists predominantly of sales presentations are serving the public interest, convenience, and necessity. The Commission shall take into consideration the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy due to their prior programming.

Mr. GORE. Mr. President, I rise to support the second-degree amendment. I do so, in part, because I share our colleague's concern about the failure of the Federal Communications Commission to ensure that owners of

local broadcast licenses meet reasonable public interest standards.

It is a fact that the FCC has, over the past 13 years, totally abandoned the principle that holders of licenses for precious broadcast spectrum perform in a manner that is in the public interest. Year after year the Reagan-Bush administrations, through their FCC appointees, have whittled away at this principle, established so firmly in the 1934 Communications Act and bipartisan actions until 1981.

Abandonment of protections for children, abandonment of the fairness doctrine, proposals to auction off radio spectrum to the highest bidder, the list goes on and on.

Mr. President, the amendment by our colleague from Florida approaches this problem from the right direction. I am troubled that the practical effect of the Breaux amendment would be to further stifle competition, to further enhance the monopoly powers of most vertically-integrated and most anti-competitive, intimidating cable company—TCI.

The natural effect of the Breaux amendment would be to deny cable carriage to a home shopping service which has had no choice but to acquire a local broadcast license in order to be carried by these cable companies intent to keep an independent shopping service off the air.

Whether or not you like home shopping channels on cable, you have to be skeptical about the motivations of a company such as TCI and its subsidiary shopping service, in refusing to carry a competitor.

I eagerly support the second-degree amendment to force the FCC to strengthen the public interest standard for local broadcasters, whether for mostly commercial programming, such as home shopping channels, or for any other local broadcaster.

But to use the must-carry rules to give a competitive advantage to a cable-owned channel against one which has avoided the acquisitive clutches of companies such as TCI is simply wrong.

I urge our colleagues to support the Graham second-degree amendment to the Breaux amendment.

Mr. DANFORTH. Mr. President, I ask for the yeas and nays on the Graham amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. DANFORTH. Mr. President, Senator DOLE would like to speak for about 3 or 4 minutes on an unrelated subject, and I believe he is expected on the floor momentarily.

Mr. LEAHY. Will the Senator from Missouri yield?

Mr. DANFORTH. Yes.

Mr. LEAHY. Mr. President, I tell my colleagues who are waiting for the distinguished leader, I do have an amendment that I understand is acceptable.

I am wondering if, in the 3 or 4 minutes we are waiting, the managers and the distinguished Senator from Florida would be willing to entertain a unanimous-consent request to set aside the pending matter to allow my amendment—and I assure the managers I will take no more than 3 or 4 minutes.

Mr. INOUYE. No objection.

Mr. LEAHY. I make that unanimous-consent request.

The PRESIDING OFFICER. Without objection, the pending first-degree and second-degree amendments are temporarily set aside, and the Senator from Vermont is recognized for the purpose of offering an amendment.

AMENDMENT NO. 1504

(Purpose: To amend the Communications Act of 1934 to require cable television operators to provide notice and options to consumers regarding the use of converter boxes and remote control devices, and to assure compatibility between cable systems and consumer electronics)

Mr. LEAHY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY] proposes an amendment numbered 1504.

Mr. LEAHY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 111, between lines 21 and 22, insert the following:

NOTICE AND OPTIONS TO CONSUMERS REGARDING CABLE EQUIPMENT

SEC. . The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding after section 624 the following new section:

"NOTICE AND OPTIONS TO CONSUMERS REGARDING CONSUMER ELECTRONICS EQUIPMENT.

"SEC. 624A. (a) This section may be cited as the "Cable Equipment Act of 1992".

"(b) The Congress finds that—

"(1) the use of converter boxes to receive cable television may disable certain functions of televisions and VCRs, including, for example, the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program or another channel;

"(B) use a VCR to tape consecutive programs that appear on different channels; or

"(C) use certain special features of a television such as a 'picture-in-picture' feature; and

"(2) cable operators should, to the extent possible, employ technology that allows cable television subscribers to enjoy the full benefit of the functions available on television and VCRs.

"(c) As used in this section:

"(1) The term 'converter box' means a device that—

"(A) allows televisions that do not have adequate channel tuning capability to receive the service offered by cable operators; or

"(B) decodes signals that cable operators deliver to subscribers in scrambled form.

"(2) The term 'VCR' means a videocassette recorder.

"(d)(1) Cable operators shall not scramble or otherwise encrypt any local broadcast signal, except where authorized under paragraph (3) of this subsection to protect against the substantial theft of cable service.

"(2) Notwithstanding paragraph (1) of this subsection, there shall be no limitation on the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' televisions or VCRs.

"(3) Within 180 days after the date of enactment of this section, the Commission shall issue regulations prescribing the circumstances under which a cable operator may, if necessary to protect against the substantial theft of cable service, scramble or otherwise encrypt any local broadcast signal.

"(4) The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this subsection in light of any actions taken in response to regulations issued under subsection (i).

"(e) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations requiring a cable operator offering any channels the reception of which requires a converter box to—

"(1) notify subscribers that if their cable service is delivered through a converter box, rather than directly to the subscribers' televisions or VCRs, the subscribers may be unable to enjoy certain functions of their televisions or VCRs, including the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use certain television features such as 'picture-in-picture';

"(2) offer new and current subscribers who do not receive or wish to receive channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, by direct connection to the subscribers' televisions or VCRs, without passing through a converter box; and

"(3) offer new and current subscribers who receive, or wish to receive, channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, in such a way that those channels the reception of which does not require a converter box are delivered to the subscribers' televisions or VCRs, without passing through a converter box.

"(f) Any charges for installing or reinstalling cable service pursuant to subsection (e) shall be subject to the provisions of Section 623(b)(1).

"(g) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations relating to the use of remote control devices that shall—

"(1) require a cable operator who offers subscribers the option of renting a remote control unit—

"(A) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

"(B) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

"(2) prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

"(h) Within 180 days after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to the Congress on means of assuring compatibility between televisions and VCRs and cable systems so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and VCRs.

"(i) Within 1 year after the date of enactment of this section, the Commission shall issue regulations requiring such actions as may be necessary to assure the compatibility interface described in subsection (h).".

Mr. LEAHY. Mr. President, this is a bill that is long overdue. Thanks to the concerted efforts of the distinguished floor managers, Senators INOUYE and DANFORTH, Senator HOLLINGS and others including Senators GORE, METZENBAUM, and LIEBERMAN, we are now within reach of passing a bill that can bring relief to beleaguered cable consumers and a much needed boost to competition.

THE CABLE MONOPOLY

Let there be no mistake. The root of the problem in the cable industry is that cable is an unregulated monopoly, and you do not need to be a rocket scientist to know that that means trouble. It means prices on a one-way ticket up. It means service that ranges from mediocre to worse. It means cable companies that can treat you any way they want with no fear of a competitor that will sell you a better product and no fear of a cop on the beat to keep the monopoly in line.

Just ask the citizens of Vermont, where cable rates rose 48 percent between 1986 and 1990; or the citizens of Newark, NJ, where cable rates rose 130 percent in that period; or the citizens of Jefferson City, MO, where rates rose 186 percent.

The industry's voluntary actions and self-imposed service standards do not change a thing. An unregulated monopoly will, as sure as the Sun rises, revert to form—raising prices and cutting corners with no fear of a competitive response. And you can bet that if the threat of this bill had not been hanging over cable's head for the past 2 years, we would not have seen even the modest steps that cable is so quick to boast about.

THE CABLE BILL—S. 12

S. 12 is a good bill that strikes the right balance between regulation and competition. It regulates rates only as long as a cable system is a monopoly, phasing out regulation as soon as bona fide competition takes hold. It encourages competition by telling programmers that are controlled by cable operators that they must sell their programming to cable competitors at a fair price. If competitors like satellite and wireless cannot get fair access to crown jewel programming like TNT, CNN, or Showtime, then competition is doomed.

THE CABLE SUBSTITUTE

Cable, meanwhile, is supporting a Trojan horse substitute, hoping to derail this legislation. The substitute itself is flatly unacceptable. It would gut the rate regulation provisions of S. 12 and eliminate the procompetitive provisions that guarantee programming to satellite and wireless.

Meanwhile, cable acts as if requiring it to make its programming available at a fair price to potential competitors is a monstrous injustice. But the industry has a short memory. In 1976, if Congress had not granted cable the right to transmit broadcast programming for a small fee, the industry never would have made it out of the cradle. Cable was able to grow precisely because it was given access to programming that others created. Now that the shoe is on the other foot, cable operators howl at the idea that they should make programming available to upstart competitors.

Nor is there a God-given right for cable to be vertically integrated in the first place. Congress could—and perhaps should—have proclaimed long ago that cable operators could not own or control programmers. If cable systems and cable programmers had remained in separate hands, many of the anticompetitive problems we now face could have been avoided. But given the vertically integrated world we live in now, with most top programmers owned by cable operators, the least we can do is demand that cable's competitors have access to programming on fair terms. To do less is to consign those competitors to defeat and America's consumers to the whims of monopoly power.

CABLE EQUIPMENT BILL

Mr. President, the main thing that the absence of competition allows a monopoly to do is ignore the best interests of its customers. We all know that when competition is lively and vigorous, companies leapfrog each other to provide consumers the best and most user-friendly choices. Look at computers. Look at long distance telephone service. Look at televisions and VCR's. But when the consumer is captive, monopolies can do what is best for monopoly and let the customer be damned.

That is exactly what has happened in the world of cable equipment. Cable operators have every right to try to protect the security of their premium programming. But they show little regard for their customers when they choose a means of protection that will sabotage the customer's television and VCR. Thanks to the converter box, you will not be able to watch a program on one channel while taping another; or tape two consecutive programs on different channels; or take advantage of the picture-in-picture feature on your new cable-ready TV; or even use the TV's remote control unit. In other words, you will not be able to use any of those features you paid for. But as far as the cable company is concerned, that is your hard luck.

It is not as though scrambling were the only way for cable operators to protect their premium channels. Other means of signal protection exist such as trapping. Moreover, there are new technologies on the drawing board now that may make it possible for companies to scramble without disabling the functions of televisions and VCR's. But with no need to beat out competitors or satisfy regulators, cable has had no incentive to worry about the customer's problems—and will continue to have no incentive unless we provide it.

In November, I introduced legislation to begin correcting the cable equipment problem and I am today offering the substance of my bill as an amendment to S. 12.

My amendment is designed to create more user-friendly connections between cable systems on the one hand and televisions and VCR's on the other so that consumers will actually get to use the TV and VCR features they paid for.

It would provide an incentive to cable operators to use technology that does not interfere with the functions of televisions and VCR's;

It would require cable operators to give customers the option of having all unscrambled channels connected directly to a cable-ready TV or VCR, avoiding the converter box wherever possible;

It would require cable operators to allow customers to buy their own remote control units from any source rather than having to pay $3 or $4 a month—month after month, year after year—for a remote control that probably does not cost more than $30; and

It would direct the FCC, in consultation with representatives of the cable and consumer electronics industry, to devise a means of assuring that cable systems and televisions and VCR's will connect in a compatible manner that allows consumers to get the benefit of the programming available on cable and the features available on televisions and VCR's.

The effort to create a user-friendly connection between cable systems and consumer electronics is more important now than ever before. New technologies that are beginning to come on line—such as digital compression, which packs more programs onto a single channel—will force more and more consumers to rent converter boxes and lose the full benefits of their televisions and VCR's. The time to insist on new standards that will create a consumer-friendly environment for years to come is now.

CONCLUSION

President Bush has been bending over backward lately to show that he understands times are tough and that

he cares about hard-pressed average Americans. Here is an opportunity to show it. I realize, of course, that our country's economic problems are much bigger than cable television. But 55 million cable households have been paying too much to get too little for too long. Every month, year in and year out, they are getting ripped off by inflated cable bills. Instead of trying to gut this legislation, instead of promising to veto it, instead of standing up for America's No. 1 unregulated monopoly, let the White House show it cares by standing up for the American consumer.

Mr. LEAHY. Mr. President, I ask unanimous consent that the distinguished Presiding Officer, Senator GORE, be added as a cosponsor of my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I yield to the Senator from Hawaii.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I have had the opportunity to discuss this measure with the author of the bill, and we are prepared to accept it.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. DANFORTH. The amendment is acceptable, Mr. President.

Mr. GORE. Mr. President, I want to offer my strong support to the Senator from Vermont for his amendment. He was among the first to realize that the practice of local cable scrambling would be a devastating blow to television consumers everywhere.

Cable-ready televisions and video recorders have been a real boon for consumers, but that technology is in serious jeopardy.

It is obvious what is going on here, cable operators don't like consumers having some control over the cable signal once it comes into their homes, so they plan to require that the consumer completely rewire his home and then rent a decoder box from the cable company, in some cases at an outrageous price.

Moreover, it is patently clear to those of us concerned about the siphoning of programming from free, over-the-air television to fit cable's pay-per-view strategy. The Congress must soon take a very close look at this corporate strategy, one that may be inherently anticonsumer. I for one plan to ask the chairman of the Commerce Committee, and the chairman of the Communications Subcommittee to hold hearings this year on the program siphoning issue, in particular the problem of sports siphoning.

For now, Mr. President, Senator LEAHY'S amendment is a solid step in the right direction, to slow this aggressive effort by the cable companies to render obsolete millions of televisions and video recorders in their pursuit of new cash flow.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1504) was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. I thank the distinguished Senator from Florida for his courtesy and the distinguished managers of the bill for their typical and well-established courtesies.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, if indeed we are waiting for a few minutes, I ask unanimous consent to make a statement on S. 12.

The PRESIDING OFFICER. The Senator is entitled without unanimous consent to speak on the bill.

The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I rise in support of S. 12, the Cable TV Consumer Protection Act. This legislation represents a fair and comprehensive approach to the problems faced by millions of consumers. I want to thank Senator DANFORTH for his personal leadership on this issue. And without the guidance of Chairman HOLLINGS and Senator INOUYE, consideration of this important consumer legislation would not have been possible.

This bill contains many provisions I have included to prohibit cable television operators from discriminating against smaller cable operators, or other multichannel video programming distributors, with regard to price, terms, conditions, or availability of programming.

Small, independent cable operators, home satellite dish distributors, and wireless cable operators have had to compete for years against the larger cable television operators for programming on an unfair playing field. The vertically integrated multisystem operators [MSO's] have long had a lock on programming. Outsiders find there is no way to join the MSO/video programmer club.

The cable giants have a strangle hold on programming and will not let go.

Access to programming is a serious problem for rural South Dakotans. Some programmers have absolutely refused to make programming available to those home satellite dish distributors who serve rural backyard dish consumers. Discriminatory pricing and refusals to deal with rural home satellite dish owners penalize consumers in the smallest towns and the farms and ranches in south Dakota and America. Today satellite dish consumers pay 500 percent more for television programming than consumers using other technologies.

Sections 640 and 641 of this bill comprehensively address this problem by ending the practices of discriminatory pricing and refusals to deal with rural home satellite dish consumers. These sections are by far the most important portions of this bill. They will foster competition. Let me explain exactly what these sections will do.

First, national programmers affiliated with cable operators would be barred from refusing to deal with other multichannel video providers. They would be required to deal with groups of small and independent cable operators which form purchasing groups, on terms similar to those given to the giant cable systems. These provisions are procompetition.

Let me just say, that if all States had cable operators like my friends in South Dakota, we would not be here today. The problem we face, however, is that large cable TV operators have created a unregulated monopoly—a monopoly accountable to no one which competes with no one. S. 12 is needed to increase competition and restrain cable rates.

As a Republican, I favor vigorous and effective competition as opposed to regulation. Consumers favor competition as well. In Milbank, SD, we have two competing cable TV operations. As a result, cable subscribers in Milbank pay 50 percent less for their cable service than surrounding communities.

I, too, had shared the desires of Senator DANFORTH and Chairman HOLLINGS to examine closely any serious proposals or alternative approaches. The alternative legislation that I understand will be offered later in the debate, however, says nothing about program access for many of South Dakota's small and independent cable operators and rural home satellite dish owners across America.

This bill also contains a carriage option provision, which I support. The must-carry provisions of S. 12 are very clear. Implementation of local signal carriage rules is essential for the preservation and further development of services which local broadcasters have initiated.

I urge my colleagues to support our efforts to bring competition to the cable marketplace.

What we have now is an unregulated monopoly. We want to have competition. Indeed, there have been many good things done by the cable industry. They have wired our Nation in part. There are positive aspects. But we can have an even more positive outcome with the passage of this legislation.

Mr. President, I ask unanimous consent to have an editorial from the Wakonda Times printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wakonda (SD) Times, Jan. 16, 1992]

CABLE TV INDUSTRY NEEDS COMPETITION

It's the business of business to make money, and it's difficult, even un-American to complain when a business succeeds and is profitable. Indeed, the more profitable the better, according to the great American tradition.

There are some exceptions. We regulate the profits of those industries that clearly monopolize the marketplace. For the most part, this regulation focuses on utilities, such as the telephone company, natural gas and electric suppliers where the demand is inelastic. That is, the price can skyrocket but consumer use remains stable.

And in some instances, such as natural gas, it is beneficial to a community to have but one supplier. Duplicating the distribution system of a natural gas pipeline would be an inconvenience (torn up streets, for example) and inefficient.

The South Dakota Public Utilities Commission oversees regulated industries. It sets a reasonable profit margin to protect consumers—approximately 12 percent—and carefully scrutinizes the companies financial records to determine if they are being run efficiently and in the best interest of consumers.

Which brings us to the cable TV industry.

It is arguable whether cable TV is a "necessary" industry for consumers. Laska Schoenfelder, a member of the PUC, compares cable TV to the telephone. While most people could get along without telephones or cable TV, they are inclined to retain those services once they are accustomed to them.

There is little argument, however, on the issue of whether cable TV is a monopoly. In South Dakota, only one city, Milbank, has two competing companies.

We don't know for sure whether these monopoly companies are gouging their customers. Since cable TV is unregulated, they do not have to disclose their financial records or defend their profit margins to any public body.

This unusual situation—an unregulated monopoly selling a much sought after service—has created some interesting facts and figures, and raises an interesting question.

Why are the rates of South Dakota's largest cities so similar? The companies serving Huron, Brookings, Mitchell, Aberdeen, and Sioux Falls charge between $19 and $20 per month for basic service. Yankton and Vermillion get similar service for $22.

In that one instance where there is competition, in Milbank, cable TV subscribers there get a nearly identical package as Vermillion subscribers, but for $10.45 a month less, a savings of almost 50 percent.

Another interesting exmaple is Beresford, where cable TV service is provided by the city. Subscribers there get 22 channels for $12.55. That's a good price by South Dakota standards. Furthermore, the Beresford cable TV systems pays its own way and also provides a tidy profit ($90,000 in 1991) for the city.

However, as we reported last week, state law currently does not allow most municipalities to enter the cable TV business. That law should be changed. If there is anything the TV industry needs in South Dakota, it's at least the possibility of competition.

Furthermore, in a city like Vermillion which is property tax poor and sees many of its sales tax dollars drained off by malls in Sioux City and Sioux Falls, cable TV could be a service that the city could provide at reasonable rates and also produce a profit to fund city services, such as police and fire protection, that are not revenue producing in themselves.

One thing is for certain, the cable TV industry needs more competition and more accountability.

AMENDMENT NO. 1503, AS MODIFIED

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Missouri.

Mr. DANFORTH. Mr. President, the minority leader is not present on the floor. I do not know of anyone who wants to speak on this amendment further, and therefore it would be my suggestion we proceed to vote on the Graham amendment.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I ask unanimous consent that the letter I earlier referred to from the Consumer Federation of America be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CONSUMER FEDERATION OF AMERICA,
Washington, DC, June 19, 1991.

Hon. DANIEL INOUYE,
Senate Communications Subcommittee, Washington, DC.

DEAR SENATOR INOUYE: I am writing on behalf of the Consumer Federation of America (CFA) to express our position on full-time, over-the-air home shopping stations. We commend you and your Subcommittee colleagues for examining the public interest obligations of broadcasters, including home shopping licensees.

CFA is concerned about the use of a scarce public resource—the public's airwaves—for full-time home shopping. In exchange for the free use of this resource, broadcasters agree to serve as "public trustees," and promise to place the public's needs ahead of their own. Home shopping broadcasters turn that obligation on its head. The vast majority of their "programming," is nothing more than the offering of goods for sale. It does not benefit the public. On the constitutional hierarchy, such commercial speech falls far below the value placed on speech about issues and ideas. Even the worst entertainment programming has some artistic merit, and is preferable to non-stop sales pitches.

The FCC has been unwilling to address this problem. Far from placing limits on such overcommercialization, the Commission has recently interpreted the new Children's Television Act of 1990 as exempting home shopping formats from the commercial time limits imposed on programs directed at children.

Unfortunately, the FCC's approach to full-time over-the-air home shopping is a small part of a much larger problem. Continued congressional acquiescence will send the wrong message to the FCC. We therefore urge you to take steps to require the FCC to allocate limited broadcast spectrum to broadcasters that serve the public's interest and not their own.

Sincerely,

GENE KIMMELMAN,
Legislative Director.

Mr. BREAUX. Mr. President, I move to table the pending amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment, as modified, of the Senator from Florida [Mr. GRAHAM]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Iowa [Mr. HARKIN] and the Senator from Nebraska [Mr. KERREY], are necessarily absent.

The result was announced, yeas 33, nays 64, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—33

Baucus	Dixon	Pryor
Bentsen	Durenberger	Roth
Biden	Ford	Sanford
Boren	Heflin	Shelby
Bradley	Helms	Simon
Breaux	Johnston	Smith
Bumpers	Kassebaum	Specter
Burns	Kasten	Symms
Coats	Lott	Wellstone
Cochran	Nickles	Wirth
Daschle	Nunn	Wofford

NAYS—64

Adams	Glenn	Mikulski
Akaka	Gore	Mitchell
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Brown	Gramm	Packwood
Bryan	Grassley	Pell
Burdick	Hatch	Pressler
Byrd	Hatfield	Reid
Chafee	Hollings	Riegle
Cohen	Inouye	Robb
Conrad	Jeffords	Rockefeller
Craig	Kennedy	Rudman
Cranston	Kerry	Sarbanes
D'Amato	Kohl	Sasser
Danforth	Lautenberg	Seymour
DeConcini	Leahy	Simpson
Dodd	Levin	Stevens
Dole	Lieberman	Thurmond
Domenici	Lugar	Wallop
Exon	McCain	Warner
Fowler	McConnell	
Garn	Metzenbaum	

ANSWERED "PRESENT"—1

Mack

NOT VOTING—2

Harkin Kerrey

So the motion to lay on the table the amendment (No. 1503) as modified, was rejected.

Mr. GRAHAM. Mr. President, I ask unanimous consent to vitiate the yeas and nays which have been ordered on the second-degree amendment.

Mr. HELMS. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Reserving the right to object, the Senator may not wish to vitiate the yeas and nays yet, because I have a second-degree amendment which I send to the desk.

I have no objection.

The PRESIDING OFFICER. The second-degree amendment is pending at this time.

Mr. GRAHAM. I renew my unanimous-consent request to vitiate the yeas and nays on the second-degree amendment.

The PRESIDING OFFICER. Without objection, the request to vitiate the vote is agreed to.

AMENDMENT NO. 1503 TO AMENDMENT NO. 1502

Mr. GRAHAM. Mr. President, I ask for a rollcall vote on the second-degree amendment.

The PRESIDING OFFICER. Would the Senator repeat his request.

Mr. GRAHAM. If their is no further debate on the second-degree amendment, I ask for a rollcall or a voice vote on the second-degree amendment.

The PRESIDING OFFICER. Thank you. Is there any further debate?

If not, the question is on agreeing to the amendment.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I wonder if I might use 5 minutes of my leader time.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE STATE OF THE UNION ADDRESS

Mr. DOLE. Mr. President, last night, George Bush came through in the clutch. Despite all the high expectations, and all the hype, and all of last night's standard partisan criticism, the President delivered an extraordinary State of the Union Address.

It had real substance, real vision, and real solutions for real people. The fact is, the President is the only one in town with a comprehensive plan for America—for the economy, for American workers, and for the free world.

Now that they have heard from the President, the American people are waiting to hear from Congress. The President is right—Congress should not keep them waiting.

This morning, President Bush demonstrated his commitment to getting the job done for America—and getting it done quickly—by coming to Capitol Hill to meet with the leaders of Congress, on both sides of the aisle, and both sides of the Capitol.

I can report today that after the President's meeting with Republican Senators, our side is strongly behind the President and his ambitious agenda. I was impressed by our group's extraordinarily high level of unity, optimism, and enthusiasm to get to work.

We told the President we're ready to roll up our sleeves and help him meet his March 20 deadline for enactment of his economic program. Some critics may not think the deadline is important, but I can tell you, President Bush is committed to it and so are we.

As I have said before, the American people are in no mood for business as usual from Congress. They want action, they want it quickly, and they will be watching Congress to make sure we deliver. Now it is time for Congress to live up to some high expectations, for a change.

Mr. President, I thank my colleagues. I yield the floor.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I ask unanimous consent that I might be allowed to proceed for not more than 5 minutes as if in morning business.

Mr. GRAHAM. Mr. President, reserving the right to object, the pending business, I believe, is the second-degree amendment on the Breaux first-degree amendment. Is that correct? I believe that the objection to a voice vote on that second-degree amendment has now been removed. I would ask that we proceed with the pending business.

The PRESIDING OFFICER. The Senator from Nebraska has the unanimous-consent request. Is there an objection to that?

Mr. EXON. I have made a request for 5 minutes as if in morning business to respond to the statement that has just been made by the Republican leader.

Mr. GRAHAM. If the Senator will just hold for 10 seconds, and allow us to have the voice vote on the second-degree amendment, then I would have no objection.

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Is there further discussion about the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 1503) was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRAHAM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. EXON addressed the Chair.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. I ask unanimous consent to proceed as if in morning business for no longer than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE STATE OF THE UNION ADDRESS

Mr. EXON. Mr. President, I just listened to my good friend from Kansas, the Republican leader, imploring everyone to get behind the President's effort. I guess a meeting was held with the President today by some of the members of the Republican Party, and it is not surprising that they pledged to get behind the President's efforts.

I, too, want to work with the President, as I think all on this side do. But I would simply say that I would like to start out by saying that I have taken a look at the defense numbers and I am fearful that many Members of the House and Senate and the public at large, when they heard the announcement that $50 billion was going to be slashed from the defense budget from the President's lips last night, automatically assumed that since we have had a defense budget in the range of $290 to $295 billion in outlays in 1992, that $50 billion would drop it down into the $240 to $245 billion range.

I advise all now that I am not ready to accept the President's proposals for lots of reasons; not the least of which is that the peace dividend that everyone assumes was announced last night is not a peace dividend.

The facts of the matter are that in 1992 we had outlays of about $295 billion in the 050 defense part of the budget. Under the President's budget proposal that was submitted to us today, after taking into consideration the $50 billion slash, the outlays in 1997 will be $289 billion. That, therefore, turns out to be less than a 3-percent reduction in outlays for defense by the year 1997.

That certainly, in my opinion, Mr. President, is not going to pay for the whole mass of programs that the President announced last night that are obviously going to cost in the billions and billions and billions of dollars. The assumption was that the "peace dividend" was going to pay for these programs, so that we could agree that the President will not further raise the deficit. Nothing could be further from the truth as reality will eventually show.

The $50 billion that the President announced last night in slashes in defense was not from the present defense numbers. At least $46 of the $50 billion was a cancellation of programs that were in the works, programs that are going to be canceled, most of which I agree with from what the President told us last night. But it is not going to create a peace dividend to pay for the program and reduction in revenues that the President outlined.

So before people jump on the bandwagon, before people say, oh, yes that is a very great program and we could take that $50 billion as a peace dividend and cash in on it on all of these good programs, I think we should take a look at the numbers. I would only suggest caution.

I thank the Chair. I thank my colleagues.

Mr. HOLLINGS addressed the Chair.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, there will be ample opportunity for a full debate on the substance of the proposals made last evening by the President here in the Senate.

We welcome those proposals, and we will, of course, accord them the careful consideration to which they are entitled. It is not my intention at this time to debate the substance of those proposals. I will do so at an appropriate time, when they are before the Senate.

I would like to address the subject which has been raised by the distinguished Republican leader, my friend and colleague, about prompt action to deal with the recession, and to encourage recovery and long-term growth.

I told the President this morning that we would act promptly. We will act as promptly as possible. We will move forward to deal with the very serious problems facing our economy, in an attempt to encourage job creation, recovery from the recession, and sustained long-term growth, which is the objective and the goal we all share. We will do so, not because of any deadline, but rather, because it is what is needed in our country.

When we talk about promptness in responding to the recession, we must keep in perspective the circumstances which have led us to this day. There has been a very lengthy delay in responding to this recession, a delay of 21 months, caused entirely by the President's inaction on the subject. For a full 18 months, President Bush and his administration denied that the country was in recession. Until just a few months ago, the President stated, and repeated over and over again, that there was no recession.

Since it was the administration's position that there was no problem, they, of course, offered no solution. Finally, when it was obvious to all Americans that the country was indeed in recession—in the longest recession since the Second World War—the President acknowledged the existence of the recession. But at that point he asked the Congress and the American people to wait for 3 months, until he figured out what to say and what to propose last evening.

We honored that request. The President did then take 3 months to figure out what to say and what to propose and made his proposal last evening, and accompanied it with the demand for action and a deadline, unilateral, not the basis of any consultation or discussion with any member of the congressional leadership, as far as I know—certainly not with myself.

So, Mr. President, I want to make clear that we want to act, we intend to act, and we will act, not because of this so-called deadline, but because it is the right thing to do. It is what the economy needs. It is what the country needs.

I hope that, in the course of the coming months, we will have the opportunity to debate fully and carefully each and every one of the proposals made, to evaluate them in the light of current circumstances, and where we disagree—as is inevitable in the democratic process—to have the opportunity to offer constructive alternatives. We look forward to that debate, we look forward to action, and we look forward, most of all, to improving the status of the economy and the well-being of the American people.

I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

Mr. HOLLINGS. Mr. President, I rise in support of the Cable Television Consumer Protection Act of 1991. Passage of this bill is necessary to respond to the needs of the cable consumer in the ever-changing world of communications.

I have followed the communications industry for decades and am continually impressed by its progress and achievements. Who would have thought a decade ago that over half of the American public would be willing to pay to watch television? After all, we had the best television in the world, and we could receive it for free. Yet, it is clear that the public sees something special in cable television—over 60 percent of American homes now subscribe to cable, and people are willing to pay a significant amount to receive it.

This tremendous growth in the cable industry has produced much of value. Most cable subscribers have access to 36 channels, and this amount is steadily increasing. Many systems already offer twice as many channels as before enactment of the Cable Communications Policy Act of 1984—the 1984 act. This increase in capacity has been accompanied by a great increase in the programming that is offered, and here too, more is on the horizon.

This growth also has produced significant problems, however, and these problems cannot go unnoticed. Cable is no longer an optional luxury; it has become an integral part of the communications network and will even more so in the future as more information and entertainment programming are transmitted via fiber optic cables. In recent years, the cable industry has taken advantage of this privileged position as the sole distributor of America's programming. The Commerce Committee has been presented with mountains of evidence of unreasonable rate increases, customer service problems, and various anticompetitive market practices. I know that certain of these problems are the result of bad actors, but nonetheless, we cannot ignore these problems.

Recently, I learned of a situation in my own State of South Carolina involving two communities next door to one another, served by the same cable company. The citizens of one community are paying more for much less service than those in the other community—in Greer, SC, Cencom Cable provides 36 channels of programming for $23.95, while in Mauldin, SC, customers pay $25.95 for only 21 channels of programming. This problem is not limited to one community. A recent constituent, who in the last 3 years has lived in three different communities in the Myrtle Beach area, informed me that in one community she was charged $15 per month for 45 channels, in another community 13 miles away she was charged $15 per month for 25 channels, and in a third community she was charged $20 per month for 14 channels. She has a right to be outraged and frustrated. Everyone is frustrated, but there is little that the local authorities can do about these discriminatory practices once the franchises are awarded. We must ensure that these examples of abuse can be corrected.

There is more here than just isolated actions by certain bad actors. The cable industry is no longer a second-class video distributor that only retransmits broadcast programming. It now serves more than half of American homes, and that amount in increasing. Furthermore, it has de facto exclusive franchises. It appears well on its way to becoming the dominant video distributor, and we must be attentive to the problems that monopolies create.

When the cable debate first began 4 years ago, I was skeptical of the need for new legislation. The 1984 act seemed to have succeeded in achieving many of its goals. However, I have become convinced that there is a need to adjust the environment in which cable operates. S. 12 responds to the legitimate needs of consumers for lower and more reasonable rates, better customer service, and the need for greater competition. S. 12 does not overturn the 1984 act; it is a reasonable bill intended to address the legitimate concerns about the provision of cable service.

Last Congress, under the leadership of Senator INOUYE, the chairman of the Communications Subcommittee, the Commerce Committee began to examine what should be done to address abuses by the cable industry and the concerns raised by consumers. The committee carefully and deliberately compiled an extensive record through numerous hearings and meetings. The committee then drafted legislation

that represented a true consensus of the committee's members.

In fact, that legislation was reported by the committee by a vote of 18 to 1. The legislation we are considering today is very similar to that bill. Like its predecessor, it, too, was approved last year with the strong committee vote of 16 to 3. Bipartisan support. Straight across the board.

This legislation reflects my concerns and those of my colleagues about the need to have some control over rates and to ensure that customers are properly served. While we want to encourage the continued growth of programming, the increase in channel capacity, and the development of new technologies, we must prevent monopolistic practices.

The cable industry has made several arguments against the bill. First, it has been asserted that the cable industry is not a monopoly. Cable systems argue that they face some competition from over-the-air broadcasters and from video rental stores. However, most often there exists no multichannel competitor, and most people subscribe to cable because of the wide group of satellite-delivered signals carried by their local cable operator. Even the cable industry recognizes this fact. Recently Warner Cable sued the city of Niceville, FL, to stop the city from following through on a proposal to build its cable system to compete with the Warner system. This company did not want competition. With this dominance comes monopolistic abuses of consumers.

Even the largest cable operator in the country says cable is a monopoly. In a brief filed in Federal Court, in a 1989 case, TCI versus Commissioner of the Internal Revenue Service, TCI said:

> The value of a cable franchise follows from the protection from competition that it provides the holder. Since the holder will have a monopoly, the prospective cable operator would be able to generate a cash flow that would result in a supernormal return on his investment * * *.

Some contend that consumers have other choices, and that they do not have to subscribe to cable. Again, even the cable industry does not see it that way. Quoting once more from TCI's brief before the court, TCI stated:

> There is no good will in a monopoly. Customers return not because of any satisfaction with the monopolist, but rather because they have no other choices.

In addition, it has been asserted that cable subscribers are no longer complaining of poor service and high rates. However, everywhere I travel in South Carolina, I hear complaints about cable's treatment of its customers, complaints that the cable industry is concerned about payment coming first and the customer last. In 1990 alone, cable rates across the country rose an average of 13.1 percent, more than twice the rate of inflation.

Last year, in response to congressional action on cable legislation, the cable industry suddenly came to life and instituted voluntary customer service standards. Voluntary standards are nice, but they are only voluntary and cannot be relied upon to protect the consumer. So far these standards do not seem to be working. One of my constituents wrote to tell me that he notified the cable company that he wanted to terminate his service because of the constant rate increases. The company did not respond for 6 months. He finally cut the cable himself because he was afraid that he would be charged with stealing the cable operator's programming. So much for voluntary service standards.

S. 12 requires that the FCC adopt minimum standards that will apply to all cable operators. The need for such standards is further evidenced by the activities of one cable operator in signing up customers for a new service, the infamous Encore Channel, without their knowledge, and then simply sending a bill to the customers for the service they did not order in the first place. This kind of behavior cries out for correction.

It has been argued that S. 12 will allow cities to micromanage cable marketing and practices. This is not a valid argument. S. 12 requires the FCC to adopt national standards for regulation of basic cable rates and permits the cities to regulate those rates only within the national guidelines. Moreover, the bill permits the FCC, but not the cities, to regulate rates for tiers of programming other than the basic tier only if a prima facie case is made that a rate increase is unreasonable. Moreover, there is no regulation of programming services offered on a per channel basis, such as HBO and Showtime.

Turning to the access to programming provisions of this legislation, S. 12 prohibits vertically integrated cable programmers from unreasonably refusing to deal with other multichannel video distributors. I must say that I had some reservations about these provisions. I recognize that cable operators created many of the program services that are available today when no one else would. However, I also recognize that there are times when steps must be taken to help promote competition in the marketplace. For example, in the late 1950's cable operators were given the right to carry broadcast stations for free, in part, to help stimulate competition to broadcast stations. In the 1970's, in another attempt to stimulate competition, the FCC adopted the financial interest and syndication rules which limit the ability of the networks to own and control programming. In the 1990's we find that competition to cable is stifled by the inability of competitors to obtain programming. Two communities in South Carolina have recently faced this very problem. In those communities, Orangeburg and Bennettsville, the existing cable operators have entered into exclusive agreements with certain program services, and, as a result, the competing cable operators cannot get access to those services. This is frustrating the development of competition, necessitating the access to programming provisions in S. 12.

Congress passed the 1984 act in order to spur the development of an exciting and necessary technology. I supported that legislation—Senator INOUYE and I were the original cosponsors in order to deregulate cable—and the goals of that legislation seem to have been realized. The cable industry is well on its way to being fully grown and is capable of standing up to anybody. Now Congress must act to meet the future needs and goals of our national communications policy. In 1992, that means meeting the desires, and protectiing the rights, of consumers while still encouraging the growth of an industry that provides a service which the public wants. S. 12 does just that.

I believe that we need S. 12. It establishes national guidelines for rate regulation and customer service, promotes competition in the multichannel video marketplace, and ensures consumers continued access to their local broadcast signals. The most ironic aspect of the cable industry's opposition to floor consideration of this legislation is that many of the provisions in this legislation are the result of the Commerce Committee's discussions with the cable industry last Congress when we were considering S. 1880. Ironically, S. 12 contains some of the provisions that the cable industry agreed with only 2 years ago.

The bill we are considering today seeks the proper balance among the competing objectives of protecting consumers and encouraging competition, while at the same time permitting the cable industry to grow and prosper.

It represents a substantial effort on the part of all the members of the committee. And I particularly thank and hail the work of both Senator INOUYE and Senator DANFORTH for their leadership and hard work on this bill.

I urge my colleagues to support this very important legislation.

And, by way of emphasis, Mr. President, it was Senator INOUYE and myself who led the way for cable over many, many years. I authored the pole attachment bill. We went in to the telephone companies and said no use to get the rights of way. We went into the cities and said no use to get additional rights of way. And we led the way for the expansion of the cable industry and its prosperity. And there are no regrets about it.

I like to see people make money. I like to see more programming. But when the cable industry runs advertisements that these regulations are going to increase cable rates and that we are trying to run them out of business, they are misleading the public.

They have been absolutely unreasonable throughout this process. We have invited them to work with us and they have declined all of our offers. They want a license to continue taking advantage of consumers through their monopoly power. I urge my colleagues to support this important consumer legislation.

I thank the Chair, and yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 1505 TO AMENDMENT NO. 1502

(Purpose: To provide notice to cable subscribers before they receive unsolicited sexually explicit programs)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 1505 to amendment No. 1502.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end add the following new section:

SEC. . Section 624(d) of Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding the following new paragraph:

"(3)(A) If a cable operator provides a "premium channel" without charge to cable subscribers who do not subscribe to the "premium channel(s)", the cable operator shall, not later than 60 days before such "premium channel" is provided without charge—

"(i) notify all cable subscribers that the cable operator plans to provide a "premium channel(s)" without charge, and

"(ii) notify all cable subscribers when the cable operator plans to provide a "premium channel(s)" without charge, and

"(iii) notify all cable subscribers that they have a right to request that the channel carrying the "premium channel(s)" be blocked, and

"(iv) block the channel carrying the "premium channel" upon the request of a subscriber.

"(B) For the purposes of this paragraph, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association as X, NR-17 or R."

Mr. HELMS. Mr. President, I have been advised that the managers of the bill would accept this amendment, so I will not go into a great deal of detail. Yet, I want to make clear the purpose of the amendment.

The pending amendment will provide protection for children, and entire families, now being assaulted—and I use that word advisedly—assaulted by unsolicited sexually explicit movies on cable television.

Mr. President, why is this legislation needed? Well, recently, premium movie channels—for example HBO and Cinemax—have discovered a rather crafty marketing technique known as free weekends. Here is how it works.

HBO offers all cable subscribers free access to its movies for one weekend. They figure it is sort of like a sample of soap; people will try it and then they will buy it.

But the problem is that millions of families refuse to subscribe to these movie channels because they do not want their children to be exposed to the violence, the disgusting dialog, and the sexually explicit scenes so prevalent on HBO and other movie channels. In essence, the programmers want to do an end run around these decisions made by families who do not want this kind of material piped into their homes. That is the reason they do not subscribe to HBO or Cinemax—they know what is on there.

HBO, and Cinemax, for example, and up peddling their garbage where and when it is not wanted.

Just imagine, if you will, Mr. President, a mother who is watching television with her 7-year-old daughter. She believes she has taken the necessary precautions because her family does not subscribe to the movie channels. But she flips the channel and all of a sudden she is assaulted by scenes from a movie called "Slave Girls From Beyond Infinity." This happened, Mr. President.

Even worse, many young children will be exposed to these movies without the knowledge of their parents. Parents often do not know that the free weekend is available on their set.

A great many of the movies presented on movie channels are R-rated. As a matter of fact, during one recent HBO free weekend, 33 percent of the movies were rated R.

I am informed that a few of the movies border on soft core pornography.

Mr. President, the pending amendment will require that the programmers and the cable companies respect the subscribers' decision not to subscribe to the movie channel. So the pending amendment simply keeps a nonsubscribing family from being offended by unsolicited movies. The cable company must notify its subscribers that a so-called free weekend is coming up, and, further, that any subscriber wishing to do so has the right to require the cable company to block the undesired channel.

The subscriber must call the cable company and ask that the channel be blocked or that the cable company provide a lockout device.

I should point out that current law already gives cable subscribers the right to have a channel blocked if it is obscene or indecent. So this amendment merely makes sure that subscribers will be notified of these rights. You would be surprised how many subscribers do not know that they have that right.

Mr. President, this amendment does not prohibit free weekend promotions. Furthermore, it applies only to channels that carry X-rated or R-rated movies, so it does not apply to channels like the Disney Channel.

Some people, obviously, want to view these types of movies, which is why they subscribe to these premium movie channels. And that is OK. This amendment does not prevent their receiving the free weekends.

If a subscriber wants the free weekend, he or she does not have to do anything at all. It will come automatically, as it does now.

Mr. President, some may say I am trying to impose censorship—they always say that sort of thing—thereby endangering the protections of the first amendment.

The Supreme Court spoke just this week on the constitutionality of another little piece of legislation that I offered in this Chamber regarding Dial-a-Porn. The Supreme Court let stand the opinion by the appellate court, which found our Dial-a-Porn to be constitutional.

Mr. President, some may ask if there is any constitutional problem with this amendment. It is constitutional to allow a subscriber to voluntarily request that his line be blocked. This is already current law. The amendment merely requires cable operators to notify subscribers of their right.

This is similar to a law that allows people to prevent sexually explicit ads from entering their homes. The Supreme Court found that law to be constitutional in *Rowan* v. *United States Post Office*, 397 U.S. 728 (1970).

Mr. President, I ask unanimous consent that a letter addressing the constitutional issue be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, the amendment simply seeks to protect unsuspecting families and their children from ambush by these so-called premium channels. In a sense, it guarantees that such families will not be in danger of what I regard as a sneak attack. The amendment requries that families be forewarned about undesirable and unwanted programming.

Mr. President, I think the amendment speaks for itself. I am willing to have it approved on a voice vote, if that is the wish of the managers of the bill.

EXHIBIT 1

AMERICAN FAMILY ASSOCIATION LAW CENTER,
Tupelo, MS, January 23, 1992.

Senator JESSE HELMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HELMS: Recently American Family Association brought to your attention a concern that had been expressed by several individuals concerning the presentation of promotional material on cable television. I would like to take this opportunity to submit additional information on this issue.

The proposed regulation has as its foundation a requirement of notice to cable subscribers that promotional material will be forthcoming on the cable system. This

notice requirement is analogous to that required for individuals disseminating sexually oriented material through the mails. On such mailed matter the person sending the material must mark on the outside of the envelope that the advertisement is sexually oriented. 39 U.S.C. sec. 3010. A notice to cable subscribers in advance of the promotional period serves the same purpose.

Secondly, the proposal would allow the cable subscriber the ability to prevent unwanted material from entering his home through the promotional periods. The ability to prevent offensive and unwanted material from intruding into the home was addressed by the Supreme Court in *Rowan v United States Post Office*, 397 U.S. 728 (1970), in the context of certain mail matters. I would direct you specifically to the Court's discussion regarding the rights of the householder in relationship to the rights of the sender of unwanted material. The Court stated:

"Weighing the highly important right to communicate, but without trying to determine where it fits into constitutional imperatives, against the very basic right to be free from sights, sounds, and tangible matter we do not want, it seems to us that a mailer's right to communicate must stop at the mailbox of an unreceptive audience." 397 U.S. at 736-37.

The same relationship between the rights of the cable subscriber and that of the cable operator exists. The cable subscriber who chose not to receive material presented on the premium channels retains that right to prevent such material from being shown in his home even if that material is delivered at no additional cost. The *Rowan* Court went on to state that "Nothing in the Constitution compels us to listen to or view any unwanted communication, whatever its merit; we see no basis for according the printed word or pictures a different or more preferred status because they are sent by mail. The ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality, and none of the recognized exceptions includes any right to communicate offensively with another." 397 U.S. at 737.

The cable companies may continue to offer the promotional periods for the premium channels. They should, however, be required to give the subscribers notice of such upcoming periods and afford the subscriber a reasonable opportunity to continue to prevent the material from being disseminated into his home. The burden to the cable company is minimal and does not infringe upon its rights to communicate under the First Amendment.

Thank you for your attention to this matter. If I can be of assistance to you, please do not hesitate to contact me.

Sincerely,

PEGGY M. HODGES,
Legal Counsel.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from Hawaii

Mr. INOUYE. Mr. President, I have conferred with the author of the amendment. I have studied the amendment and I am prepared to accept it.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I would like to take a moment to again compliment the distinguished Senator from North Carolina for moving into an area that clearly did need addressing. I think this is an amendment all Members can support. We have checked with the leadership on our side, on the committee, and we are prepared to accept the amendment also.

The PRESIDING OFFICER. Is there further debate? The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask unanimous consent that the distinguished Senator from South Carolina [Mr. THURMOND], be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I rise in strong support of the amendment offered by my colleague from North Carolina, Senator HELMS. This amendment should be a noncontroversial amendment. I support S. 12, the underlying measure, and strongly believe this amendment is an important addition to the bill.

This amendment ensures that cable subscribers will not be subjected to unsolicited sexually explicit movies on cable premium channels. Many premium "pay" channels on cable television have discovered a new marketing technique commonly referred to as "free weekends." This occurs when they remove the blocks from their subscriptions which permits free access to movies for a weekend. In other words, cable subscribers whose signals are always blocked when they turn to pay channels will find that they are being provided the programs free of charge. Obviously, the marketing goal is to hook the viewer into subscribing once the free weekended is over.

The problem with the free samples of premium pay channels is that many families do not subscribe to these channels because programs and movies are aired which contain vulgar language and sexually explicit scenes. Nevertheless, the pay channels have decided for the customer that they should have access to this programming.

Mr. President, the Helms amendment places a reasonable limit upon the current practice of unsolicited free weekend. The amendment simply requires that before a cable company can provide subscribers with free premium pay channels, it must first notify the cable subscribers of their plan to do so, inform them that the free channels can be blocked, and block the line if requested to do so. This would apply only to the those premium pay channels which offer X, R, or NR-17 rated movies.

Critics of this amendment may claim that by simply turning the channel, opponents of free weekend can avoid the sexually explicit programming they find offensive. Yet, this ignores the fact that this explicit material is entering the privacy of another's home completely unsolicited. Furthermore, children cannot be monitored every minute of the day.

Mr. President, I am satisfied that this provision passes constitutional muster since it is similar to current law regulating the mailing of unsolicited sexually explicit advertisements. That law was upheld by the Supreme Court in 1970.

Mr. President, I find troubling much of what we, as a Nation, watch on television. In fact, I feel there is far too much violence and sex on television. However, many people do choose to watch this material. Nevertheless, the rights and desires of those who find these pay channels to be offensive must be respected. If they have made the decision not to subscribe to a particular premium service, then they should have an opportunity to prevent the unsolicited airing of this material in their home.

For these reasons, I urge my colleagues to support this important amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1505) to amendment No. 1502 was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr BENTSEN. Mr. President, I rise in support of pending legislation introduced by my distinguished colleague from Missouri, Senator DANFORTH: The Cable Television Consumer Protection Act of 1991 (S. 12). For several years now, I have received many complaints about the cable industry—primarily about high rates and poor service. The Senator from Missouri has tirelessly led the fight to enact legislation that would address these important concerns. Mr. President, I thank my colleague from Missouri and the chairman of the Commerce Committee—Senator HOLLINGS—for their efforts in bringing this issue before us.

Throughout my career, I have emphasized the importance of encouraging and maintaining competition in the marketplace as the best way to ensure that both consumers and business are treated fairly. I have also worked to encourage our Nation's businesses to develop and improve those technologies that will increase the access of all Americans to valuable information about our rapidly changing society. Without a doubt, the development of the cable industry in this country has played an important role in this regard. Millions of Americans—an estimated 54 million households—now rely on cable television as a major source of information and entertainment.

In 1984, Congress sought to establish a national policy to guide the development of the cable industry by enacting the Cable Communications Policy Act. It was then determined that the Federal Government, along with State and local governments, had important

roles to pay in the development of national cable policy. In the absence of competition for cable operators, Congress decided that these entities, along with the Federal Communications Commission, were responsible for ensuring that the public interest in reasonable rates and quality service was protected. In so doing, they were also responsible for continuing the growth and development of the cable industry.

As a result of the 1984 act, the cable industry has flourished and has substantially changed the way the American public makes use of the broadcast media. It is estimated that cable service is available to over 90 percent of the Nation's households, and the cable industry now earns billions in annual revenue. Thus, cable television has clearly become the dominant medium for video distribution in this country. However, Mr. President, it must be admitted that the 1984 act did not stimulate effective competition in the cable industry.

As a result of its tremendous growth, the cable industry has acquired considerable market power that is often harmful to consumers and competing video distributors. Specifically, consumers have, in many instances, been forced to accept substantial increases in the rates charged to them for cable service. It is clear from numerous congressional hearings and studies that, over the past several years, average cable rates have increased dramatically—well beyond the underlying rate of inflation. Moreover, the quality of customer service is a constant source of consumer complaints. Also, video programmers are often leveraged out of control over their product, while competing video distributors find it difficult, if not impossible, to acquire any real market strength.

I know that the cable industry has recently made an effort to address some of these concerns, as my distinguished colleague from Oregon, Senator PACKWOOD, has noted. These efforts, however, do not eliminate the need for Federal regulation of this industry—especially since real competition still does not exist.

In most of our Nation's communities, cable companies have no real competition—in fact, it has been determined that only 53 of the approximately 11,000 cable communities in this country have a second competing cable franchise. There is no significant competition from other multichannel video providers like wireless cable and direct broadcast satellite systems. This clear lack of competition, combined with the recent record of rate increases and service complaints, demands governmental intervention to encourage fair competition and protect the rights of consumers.

Without this intervention, the rights of consumers will remain substantially unprotected.

Without this intervention, cable rates will continue to escalate well beyond the rate of inflation.

Without this intervention, many Americans will find themselves unable to afford cable service.

And, finally, without this intervention, overall customer service and technical standards in the provision of cable services will not improve.

The legislation introduced by my friend from Missouri goes a long way toward addressing these concerns. This bill directs the FCC to establish, within certain guidelines, minimum standards for rate regulation, customer service, and technical requirements, that will operate in the absence of effective competition. Further, local governments are given the authority to enforce these standards against local cable companies as necessary and appropriate.

The bill addresses widespread concerns about concentration and vertical integration in the cable industry. It also requires that all competitors of cable companies be given equal access to programming.

The bill also contains provisions designed to preserve the public interest in access to important local news, public affairs, and entertainment programming—while providing broadcasters the opportunity to receive fair compensation from cable operators for the retransmission of their signals.

In sum, the pending legislation is necessary to satisfy the Government's compelling obligation to protect the rights of consumers where market forces are insufficient. I would prefer not to create a new system of Federal regulations—but, history tells us that where competition does not exist, the rights of consumers will ultimately be trampled upon. Thus, enacting this legislation is an appropriate action for Congress to take—until effective competition takes root in the cable industry.

I urge my colleagues to support the passage of the pending legislation.

Mr. ADAMS. Mr. President, I rise in strong support of the cable television consumer protection legislation, S. 12.

Thanks to a jump start from Congress in the 1984 Cable Communications Policy Act, cable TV has become a fixture in many American homes. Cable has also established a stranglehold over consumer pocketbooks. In more than 99 percent of the markets, only one cable company exercises control. Thanks to this system, rates have increased by more than 60 percent nationwide.

Here is a typical example of what has happened in Washington State. Late last year, a man from Tacoma sent me a cartoon in which someone reads a Christmas card to another: "At this joyous time of year we offer you this verse * * * expect another rate increase on January first." The second person replies: "I hate getting Christmas cards from the cable company!" The man from Tacoma also included a copy of his Christmas card: It was a notice from his local cable company raising rates on January 1, 1992. He circled the new monthly basic rate and inscribed "Again!?"

With unemployment at 9 million people and the economy in a chronic recession, any rate increase has a harmful effect on American households. Rate increases have an especially harmful impact on persons on fixed incomes. Cable TV has become a lifeline to the world for many senior citizens. As the National Council of Senior Citizens points out, seniors on fixed incomes find it hard and harder to pay the skyrocketing cable rates.

Shocking rate increases for individual households since the 1984 Cable Communications Policy Act was enacted make the rate regulations section of S. 12 the most important provision in this bill. I have appended to my statement figures from the Consumer Federation of America showing cable rate increases in Washington State. The average rate increase since 1986 for our five markets was 85 percent.

Another significant section provides for what is known as must-carry. I am an ardent supporter of public television. The must-carry provision is essential to protect public television and the rights of small independent commercial stations. Without this, these stations could be swept off cable or be saddled with obscure channel positions on the cable dial.

The must-carry provision also guarantees the actual distribution of public television and small independent commercial TV stations. One station in Washington, KCJ channel 17 in Yakima, has been trying for 2 years to get picked up by cable. This is the only locally owned, commercial television station not on cable. It also happens to be the only Hispanic station, which serves the large and growing Hispanic population in the Yakima Valley. This bill would help KCJ and Hispanic viewers in the valley.

The retransmission consent provision of S. 12 requires more equity in the business relationship between local TV broadcasters and the cable companies. This provision takes a balanced approach. I believe some local affiliates of major TV networks when they predict their financial future is uncertain at best under cable deregulation. I do not want to see local TV stations fall into bankruptcy like many of our deregulated airlines.

Finally, the access to programming provision is designed to stimulate new forms of transmitting, such as high-definition satellite-transmitted TV and audio. This section will help U.S. industry pioneer new forms of communication. Clearly, this would also enhance our international competitiveness.

A Washington State senator recently wrote me that he receives annually hundreds of letters from cable television customers complaining about

poor service, increasing rates, and a lack of choice. A mayor of a major city in the State of Washington recently wrote me the following note:

For the past 2½ years City staff has been engaged in refranchising negotiations with our local cable operator. We have discovered that few of the public benefits envisioned by the supporters of the 1984 Cable Act have come to fruition, and the process of crafting a franchise which meets the community's future cable-related needs and interests is frustrated for all sides involved.

The mayor goes on to point out that not only do he and his city council endorse S. 12, but so do the National League of Cities, the U.S. Conference of Mayors, and the National Association of Counties. Many local elected officials would like to see an even tougher bill. Wherever possible, we should fashion as strong a consumer bill as possible.

S. 12 also looks to future competition, especially from new wireless cable systems. Section 6 of S. 12 provides competitors of the existing cable system with fair access to programming. The Skyline Entertainment Network, a wireless system in Spokane, WA, claims that big cable system operators will try to maintain their monopolies by trying to weaken or eliminate the fair access provision in the bill. Skyline and a similar wireless system in Yakima, WA, are good examples of the type of new systems that section 6 will encourage.

In conclusion, Mr. President, let me repeat: S. 12 is a good bill. We need to restore reasonable regulation, balance, and sanity to today's cable marketplace. S. 12 will help us accomplish this.

According to the Consumer Federation of America the following figures illustrate the extent of cable rate increases in the State of Washington:

BREMERTON—TCI CABLEVISION OF WASHINGTON

1986—$11.95 for basic service (25 channels) (Nation Wide Cablevision Inc.)

Dec. 1991—$19.20 for limited basic (26 channels); $20.55 for expanded basic (31 channels).

Feb. 1992—$20.20 for limited basic (26 channels); $22.55 for expanded basic (31 channels).

Increase: December 1991—61% for similar offering.

Increase: February 1992—69% for similar offering.

Note: There will be a 5% rate increase for limited basic service and a 10% increase for expanded basic service in February 1992.

PULLMAN—CABLEVISION

1986—$9.45 for basic (22 channels).

DEC. 1991—$6.23 FOR LIMITED BASIC (12 CHANNELS); $20.55 FOR EXPANDED BASIC (33 CHANNELS).

Increase: 117% for similar but expanded offering.

SEATTLE—TCI CABLEVISION OF SEATTLE INC.

1986—$10.55 for basic (14 channels) (Group W Cable of Seattle).

Nov. 1991—$20.00 for basic (35 channels).

Increase: 90% for basic service.

SPOKANE—COX CABLE SPOKANE

1986—$11.00 for basic (35 channels).

Dec. 1991—$19.91 for basic (33 channels).

Increase: 81% for basic service.

TACOMA—TCI CABLEVISION OF TACOMA INC.

1986—$12.95 for basic (32 channels) (Group W of Tacoma).

Dec. 1991—$20.03 for limited basic (26 channels); $21.03 for expanded basic (31 channels).

Feb. 1992—$22.03 for expanded basic (33 channels).

Increase: December 1991—62% for similar offering.

Increase: February 1992—70% for similar offering.

Note: There will be a 5% rate increase for expanded basic service in February 1992.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1502, AS AMENDED

Mr. INOUYE. What is the pending business, Mr. President?

The PRESIDING OFFICER. The pending question is the amendment by the Senator from Louisiana, as amended and further amended.

Mr. INOUYE. Mr. President, I ask unanimous consent that the rollcall requested on that amendment be vitiated and that we take it up immediately.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Louisiana?

The question is on agreeing to the amendment.

The amendment (No. 1502), as amended, was agreed to.

Mr. HELMS. I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1506

(Purpose: To provide for carriage of closed caption transmission)

Mr. INOUYE. Mr. President, in behalf of the Republican leader, Mr. DOLE, I am pleased to send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE], for Mr. DOLE, proposes an amendment numbered 1506.

Mr. INOUYE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 97, lines 11 through 12, strike "and accompanying audio" and insert in lieu thereof ", accompanying audio, and Line 21 closed caption".

On page 108, line 2, strike "and accompanying audio" and insert in lieu thereof ", accompanying audio, and Line 21 closed caption".

On page 63, line 21, strike "(27)" and insert in lieu thereof "(28)"; and on page 71, strike all on line 2, and insert in lieu thereof the following:

"(27) the term 'Line 21 closed caption' means a data signal which, when decoded, provides a visual depiction of information simultaneously being presented on the aural channel of a television signal; and".

Mr. DOLE. Mr. President, just over a year ago Congress passed the Television Circuitry Act which will require that all television sets beginning in July 1993 must be capable of providing closed captioning. There are approximately 20 million television sets sold annually. As a result of this act, more than 24 million Americans who are hearing impaired will be able to access television coverage via captioning.

With passage of the Americans With Disabilities Act and more recently the installation of closed captioning of Senate floor proceedings, Congress has become more sensitized to the needs of hearing-impaired citizens who deserve and want to take part in the democratic process. We must go one step further to ensure that the same consideration is given to all cable viewers. The amendment I am offering today will provide greater guarantees of captioning—which is so vital to hearing-impaired viewers—by ensuring that cable television scrambling does not interfere with the provision of captioning coverage.

Mr. INOUYE. Mr. President, this amendment is a very simple one. It just says that cable will also provide closed captioning as networks do at the present time. This is to accommodate those with special disabilities.

Mr. LOTT. Mr. President, certainly there is no objection on this side of the aisle to the distinguished Republican leader's amendment. As is always the case he is very sensitive to those with disabilities and wishes to have this available for those persons with hearing impairment.

I think it is certainly commendable and something we should do. So we would be happy to accept this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1506) was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. INOUYE. I ask unanimous consent that the distinguished Senator from North Carolina be permitted to speak as though in the morning hour on a subject other than the matter before us.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE FISCAL YEAR 1993 BUDGET OF THE U.S. GOVERNMENT

Mr. SANFORD. Mr. President, I thank the distinguished chairman for his courtesy and want to take this brief time to talk about the budget that we received late last night or early this morning.

For nearly 5 years now I have stood in this Senate to talk about the seriousness of debt and debt coverup, attempting to get the President and many of my colleagues to pay more attention to debt.

The Federal debt is the single most serious threat we face in this country today. It is a fundamental part of our economic downturn; not the only reason, but a significant reason. It is like the Berlin Wall holding back badly needed reforms to create more jobs and train more workers, and to strengthen our future.

The President's budget estimates that we will owe $316 billion in interest on that debt in fiscal 1993, making interest the largest single entitlement in the Federal budget. We could eliminate all defense spending in 1993 and not save enough money to pay our interest on the obligation for that year, interest that is rapidly consuming the Federal budget.

One reason our debt has grown so large over the past decade is the debt coverup. If the people do not know, the people cannot act. The President's deficit numbers do not reflect the annual increase in the public debt. And when the budget numbers are fully reported they are reported in ways that most people simply cannot understand.

The budget proposed by the President today is a perfect example of this. The numbers are all there, but you have to know what to look for and how to find it. I serve on the Budget Committee. I have carefully reviewed the President's budget proposals each year I have served in the Senate, and I probably understand these budgets as well as anyone else. But this budget proposed today takes the cake. The accounting is so creative that I am not sure what they have done.

Table 2-3 on page 25 of the President's budget lists the creative variety of deficits and numbers. It might be construed as deficits. That misleads the public and misrepresents the real problem of the debt.

For fiscal year 1993 it lists deficits at $352 billion; deficit excluding interest, $138 billion; deficit excluding deposit insurance and interest, $62 billion; deficit on an accrual basis, $333 billion. I do not know why these last three deficits are listed or what they mean.

Next the President's budget lists Social Security reserves and interest separately, and at the bottom below that it has a figure of $90 billion, in the place that you would think the deficit would be listed. I asked several people to look at this table and tell me what the deficit is. And they have answered $90 billion. Well, that is not so. That $90 billion is one more example of coverup.

Most of the interest in trust fund surpluses they use to mask the true size of our annual deficits, and that is not the deficit.

This table on page 25 is more of the President's budget tomfoolery.

None of the deficit figures listed on page 25 of the President's budget reflect the amount they will add to the debt in 1993. The real deficit, the amount of money we will spend that must be borrowed is not listed anywhere on that page where deficits are listed. To get that figure, the annual debt increase, the true deficit, the accounting deficit, you must turn to page 289 of the President's budget and figure it out.

If you take the time to do this, you will see that the President estimates that we will add $464 billion to the debt in fiscal year 1993, and that is a deficit of $464 billion that we face, not $352 billion, or $138 billion, or $333 billion, or $90 billion; but our deficit for the coming year will be $464 billion, almost half-a-trillion dollars.

I might also point out that the total interest owed on the Federal debt is also not listed in this table. A much smaller interest figure, net interest, is listed. Net interest does not include any interest we pay or owe, that is, to Social Security and other trust funds. But we owe it. We have put IOU's in to cover it. We have to pay it back.

So it is easy to see that, once you find the figures, this is a large part of the coverup that has kept the American public from knowing just how serious our deficit and debt situation is. In case anyone is interested and wants to find the total interest, you must turn to the appendix of the President's budget. Total interest for fiscal year 1993 comes to $316 billion, almost exactly $100 billion more than the net interest figure listed on page 25—more of the coverup.

Mr. President, this tomfoolery is deceitful and dishonest and needs to be outlawed. I propose just that.

Three years ago, almost to the day, I introduced S. 101, the Honest Budget Act, to require an honest accounting of the Federal budget, that the operating account within that budget be balanced. I reintroduced that legislation a year ago, and entitled it the Honest Balanced Budget Act, because we can have an honest budget, and we can get at balancing the budget right now.

The central point of this legislation is a new, but honest, definition of the Federal deficit, one so simple that it should not be disputed. No accountant disputes it. In fact, accountants would insist on this as a definition of deficit. S. 101 defines a deficit as the annual increase of the Federal debt subject to the statutory limit. Nothing more, nothing less. It includes gross interest, which is an honest figure, not net interest, which deceives and excludes the use of trust fund reserves for coverup. No fudging with off-budget maneuvers, no creative accounting, no tomfoolery, just clear, straightforward, honest accounting that any American can understand.

S. 101 keeps the unified budget, but also requires a more businesslike presentation that more clearly exposes our fiscal problems.

The unified budget is split into three easily understood parts. Social Security and all Federal retirement program spending and receipts are listed apart from the general operating spending and receipts. They are in a column of their own, where we can see what they are, where they cannot be used for coverup. All of those funds, those trust funds, are not our money. We merely are the trustees. All payments to those retirement programs, both employer payments transferred from general operating revenue, and earmarked trust fund revenue, are included in that accounting, that trust money.

S. 101 also requires that all interest obligations be clearly listed in a debt and interest account, separate from retirement, separate from general operating accounts. Also clearly listed here is the annual debt and the annual debt increase; the real deficit and the real debt are there for everybody to see. I expect everybody to get agitated and excited about wondering why we do not do something about them.

All other general revenue receipts and spending are listed in an operating account that must be balanced each year. With the exception of this balanced budget requirement, S. 101 simply requires us to account for Federal spending in a way that exposes honestly and simply the fiscal problem of debt and interest that we have faced now year after year for a decade.

If we apply these accounting changes to the President's budget pro-

posal for 1993, we see a clear and honest deficit of $464 billion—almost a half trillion dollars—and a total interest obligation of $316 billion, a hefty surplus in our trust fund, and a somewhat manageable general operating shortfall that can be managed and balanced. The President, Members of Congress, and the American public would have a better picture of the problem and a better understanding of what must be done if we ever hope to pull ourselves out of what now seems to be a bottomless pit.

Be honest. That is the message. It is a fairly fundamental principle of American Government. Thank you.

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate continued with the consideration of the bill.

Mr. GORE. Mr. President, I want to thank you for your outstanding leadership on legislation. I am particularly pleased to note that this bill will guarantee viewers access to programming services of their local public television stations.

Mr. INOUYE. I thank the chairman, for his kind words. I, too, am pleased that this legislation will require cable carriage for all distinct local public television signals. Public stations provide critical services to their communities, and the Government has a substantial interest in seeing that these services reach the viewers who have paid for them—not only with their Federal, State, and local tax dollars but, in many cases, through their own voluntary contributions.

Mr. GORE. Mr. President, I have a statement relative to the unique services provided by local public stations and to the substantial government interest that will be served by giving them must-carry status with their local cable systems.

Mr. President, this statement is an addition to the excellent report of the Senate committee on S. 12. Although the report contains a discussion of the need for carriage of local broadcast signals on cable systems and why carriage requirements are constitutional, it does not fully address the unique reasons why carriage of public television signals serves an important governmental interest and is constitutional.

Public television serves important governmental interests which are in addition to and distinct from those served by commercial broadcast stations. For nearly 40 years, Mr. President, the Federal Government has recognized the need for, and has supported public television—as an alternative to commercial television—to meet the Nation's educational, informational and cultural needs. As early as 1952, the FCC set aside 242 channels in the spectrum for the exclusive use of public television. In the Public Broadcasting Act of 1967, Congress found that "it furthers the general welfare to encourage public broadcasting services" and that "it is necessary and appropriate for the Federal Government to complement, assist and support a national policy that will effectively make public broadcast services available to all citizens of the United States." Since 1972, Congress and the executive branch have cooperated in efforts to fund public television, with an investment of $2.3 billion.

This substantial congressional support constitutes only a small portion of the total public investment in the system. Over two-thirds of all public television stations are licensed to State and local government agencies, public colleges and universities, school districts and other public groups which have provided public service programming at a State and local taxpayer investment of $3.9 billion since 1972. But the largest source of support for public television has come from the American people who have contributed a total of $5.1 billion in the last two decades.

Public television takes on even greater importance today as this country refocuses its efforts to improve the Nation's schools. Public television stations bring top-quality instruction to more than 29.5 million elementary and secondary students in 70,000 schools in virtually every school district in the country. In addition, the stations, in conjunction with the PBS Adult Learning Service, have enabled 1.4 million adults to study for college degrees from their homes. The stations have also prepared thousands of out-of-school adults to earn the equivalent of a high school certificate through telecourse programs, and have in place 500 literacy tasks forces throughout the country helping people learn to read. Public television stations also serve as catalysts to mobilize local community organizations and volunteers to address national problems such as teenage use of alcohol and drugs, racial harmony, domestic violence, child care, AIDS, the environment, and other critical social issues.

These are some of the less known services provided by public television. Many of you are undoubtedly aware of public television's other educational and entertainment jewels, including its unmatched children's programming like "Sesame Street," "Mister Rogers' Neighborhood," "Reading Rainbow" and "3-2-1 Contact"; its distinctive news and public affairs programming like "The MacNeil/Lehrer News Hour" and "Frontline," and its distinguished documentaries such as "Nova" and "National Geographic Specials." Public television's recent presentation of the "The Civil War" captured the intellect and emotion of the entire Nation, and is now being used by teachers to bring life into classroom courses on the Civil War.

In my own State, Mr. President, public television is vitally important, particularly in the role it plays in bringing educational opportunities to South Carolina's rural schools. South Carolina Educational Television serves more South Carolinians than any other educational institution: over 515,000 schoolchildren, over 7,000 college students, over 25,000 medical personnel and 6,500 law enforcement personnel, judges and magistrates. It is a member of a consortium of public television stations that deliver educational programming to 600 schools in over 20 States on a live, interactive basis directly by satellite. Through this consortium high school students in predominately rural schools can take advanced, college placement courses that would otherwise be unavailable to the students, such as Japanese, Russian, physics and probability and statistics, from some of the best teachers in the country. South Carolina ETV also runs "The Children's Place," a State agency-sponsored day care center that functions as the production center for the Nation's most widely used training tapes for early childhood educators.

South Carolina ETV has also served as a valuable community resource by involving local community organizations and volunteers in addressing serious local issues. For example, South Carolina ETV sponsored an outreach program on teenage drinking and driving and provided a bank of phones staffed by drug and alcohol abuse counselors to handle calls. Most recently it launched a nationwide outreach campaign focused on children and their families with the documentary, "All Our Children with Bill Moyers."

These are just snippets of public television's vital contribution to South Carolina. These outstanding public services are duplicated throughout the United States. Public television is fulfilling Congress' goal of providing a source of high quality alternative telecommunications services for all citizens of the Nation as well as promoting the broader national goal of educational excellence. The Government has a substantial interest in ensuring that these services remain fully accessible to the widest possible audience.

The must carry rules for public television, contained in section 615 of S. 12, are needed to ensure that the American public has access to this public service programming which it, along with Congress, has supported for the last three decades. The FCC, in its cable report, recommended adoption of must carry rules for public television because of its unique services and the Government's expressed interest in its viability. The National Cable Television Association has also endorsed these rules.

Unfortunately, Mr. President, cable operators are continuing to drop public television stations from cable systems. The committee report on S. 12 sets out in great detail evidence which demonstrates that cable operators have dropped broadcast stations from cable systems in the absence of

must carry rules. I would like to supplement that excellent report with additional evidence demonstrating noncarriage of public television stations. The 1988 FCC cable carriage report referred to in the committee report, made separate findings related to public television drops and switches. Cable systems reported 463 instances of noncarriage of public television stations affecting 153 stations and 541 instances of channel shifting affecting 182 stations.

It is my understanding that the drops and switches are continuing. Since the beginning of 1991 alone, the Association of America's Public Television Stations has received reports from numerous stations that have been dropped or switched. Many of the dropped stations were licensed to public colleges and universities—the stations most likely to carry more instructional and educational programming.

The committee report clearly explains why cable viewers do not, as a practical matter, have the option of receiving a dropped station over the air. Very simple, noncarriage of a station results in cable viewers being cut off from that station. The committee report recognized that how cable operators exercise their gatekeeping power depends on the type of broadcasting station involved. Public television stations are uniquely vulnerable to noncarriage. As we all know, Mr. President, cable systems are for-profit enterprises and naturally seek to carry programming which maximizes dollars and audience. Public television, in fulfilling its mandate to serve those audiences not served by commercial enterprises, carries much programming that cable systems finds economically unattractive.

The impact of noncarriage is particularly devastating to public television stations. The largest single source of funding for public television is from private individual contributions. When a local cable system drops a public television station, its contributions from its cable viewers are in jeopardy. Without the key financial support from its cable audience, a public television station can easily slip below the level of viability required to continue to provide service to its broadcast audience. Stations not only lose audience and contributors, they also lose paying enrollees to their college telecourses, and elementary and high school students are deprived of their instructional programming. I was amazed to learn that 69 percent of the public television stations that provide instructional programming to schools distribute that programming via cable.

I understand there are concerns that these must carry rules are unconstitutional based on two prior court decisions. Mr. President, the committee report contains an excellent analysis of why must-carry rules for all broadcast stations—including public television stations—are constitutional. I would only note some additional arguments that are available in applying the O'Brien test to the must carry rules for public television. First, the Government has substantial interests, in addition to those which support carriage rules for all broadcast signals, in the carriage of public television signals. I have just discussed these interests in some detail. They include: Ensuring the public television can continue to serve the important Government interest of advancing the educational goals of the Nation through the delivery of educational, informational and cultural programming; and preserving the substantial investment of Congress, local governments, and individual subscribers in public television. The rules will further these interests by ensuring that cable operators will not be permitted to continue acting as unfettered gatekeepers of this important public service.

Second, different facts demonstrate that the proposed rules for public television are narrowly tailored to accomplish the Government's objectives with minimal effect on cable systems. I understand from data compiled by the Association of America's Public Television Stations that if mandatory carriage of all qualified local public stations were required, 84 percent of the Nation's cable systems would only be required to carry one public service; 13 percent might have to carry two services; and 3 percent of all systems might be required to carry two or more services, and these are found in seven of the largest television markets. However, the burden on cable systems may be even less under the proposed rules. They require that cable systems carry only qualified local public stations that request it, and do not require that systems carry duplicative programming services.

This minimal regulation surely is justified to further the Government's substantial interest in making sure that all Americans have access to the quality educational and informational programming which they support through their direct contributions as well as through their state and federal tax dollars.

CLARIFICATION OF SECTION 615(i)(2)

I would also like to clarify paragraph (2) of subsection (i). This provision which is similar to the "network nonduplication" provisions of subsection (f), is designed to address the relationship between the act and Federal copyright law. In some instances, a qualified public television station may meet the definition of a local station under subsection (k)(2) of the act, while simultaneously qualifying as distant under section 111 of the Copyright Act—and therefore triggering the payment of copyright royalties. This situation could arise, for example, if a public television station's principal community reference point is within 50 miles of the cable system's principal headend but more than 35 miles away from any point in the cable community. A cable operator is not required to add any such public television station under this legislation unless the station agrees to reimburse the operator for the incremental costs assessed against the system under copyright law with respect to the carriage of such station.

Paragraph (2) thus creates a very limited exception to the general rule against payment for carriage. It is applicable only to stations that are local under this act but distant under the Copyright Act; only to stations that are required to be carried on the cable system; and only to stations that were not carried as of January 1, 1990. Moreover, these provision are not mandatory and may be waived by the system operator.

In those cases in which a cable operator may seek reimbursement from a public television station under this subsection, it may seek to collect only the operator's incremental copyright costs. Under the Copyright Act, the percentage of gross receipts that a cable operator pays for carrying distant television station tends to decline with the total number of distant signals carried. Thus, the additional copyright costs actually resulting from later added stations will often be less than those from stations carried previously. It is my understanding that use of the term "incremental" in this paragraph, indicates that the amount of reimbursement should be computed at the marginal cost actually attributable to the addition of that particular station.

REGARDING A FORMAL CEASE-FIRE IN EL SALVADOR

Mr. INOUYE. Mr. President, in behalf of the majority leader, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of Senate Resolution 248 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

A resolution (S. Res. 248) expressing the sense of the Senate regarding the signing on January 16, 1992, of the agreements for a formal cease-fire in El Salvador, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there is to be 10 minutes of debate evenly divided on this resolution.

The Senator from Minnesota.

ADDITIONAL COSPONSORS

Mr. DURENBERGER. Mr. President, I ask unanimous consent that Senators WARNER, DECONCINI, GRAHAM of Florida, KENNEDY, WALLOP, CHAFEE, and HATFIELD be added as cosponsors of this resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURENBERGER. Mr. President, I further ask unanimous consent

(b) It is the sense of the Senate that—

(1) the United States should remain committed to providing appropriate assistance to the government and people of El Salvador that promotes the process of reconstruction, reconciliation, and further strengthening of democracy and democratic institutions;

(2) the United States should remain committed to seeking and encouraging other members of the international community to contribute materially to this process in El Salvador; and

(3) the United States should remain committed to cooperating with United Nations efforts to monitor compliance with the peace agreements in El Salvador and other efforts pertaining to the United Nations role in postwar El Salvador.

Mr. INOUYE. I move to reconsider the vote.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I have discussed the status of the current bill with the managers, with the distinguished Republican leader, and with Senator PACKWOOD, who is a principal author of a proposed substitute amendment, and, as a result of that discussion, there will be no further rollcall votes this evening.

Senator PACKWOOD indicated his intention to offer his substitute amendment at 11 a.m. tomorrow, when the Senate returns to consideration of the pending bill. And the managers advise that it is their belief we can dispose of that amendment and all other amendments of which they are now aware and, hopefully, complete action on the bill tomorrow. That means there will be votes during the day, and as Senators know from our prior practice and from the written notice I have provided to each Senator prior to now, Thursday is the day on which we can expect a session in the evenings and votes. So it is my hope we can complete action on the bill tomorrow as I have just stated and described.

The managers, Senator INOUYE, Senator DANFORTH, Senator PACKWOOD, and Senator DOLE are here. The statement I made arises out of discussions I had with them on this point.

I will be pleased to yield now to Senator PACKWOOD.

Mr. PACKWOOD. Here is what I have been able to find out. The Senator from Hawaii has been very generous with me, giving me the time I need. I am prepared to start tomorrow. I cannot get a UC with limits on time. This is one we will spend more time trying to get a UC than if we just start.

Mr. MITCHELL. I thank the Senator for that. I think the best way to proceed is to proceed. I expect then when we conclude this evening——

Mr. PACKWOOD. I might say to the leader that this may require me not to attempt to have a vote on the luxury boat tax. But he has no interest in that. It does not matter.

Mr. MITCHELL. I will be there, I assure the Senator of that. I will be there voting on that matter whenever it arises. But I hope we will be able to complete action on this bill tomorrow. In any event, we will begin and proceed with that intention.

Mr. JOHNSTON. Mr. President, will the majority leader yield to me?

Mr. MITCHELL. Yes.

Mr. JOHNSTON. I wonder, Mr. President, if I may ask unanimous consent that it be in order for me to introduce a bill at this point and proceed for 3 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. GORE. Reserving the right to object, if I might make a brief inquiry of the Senator from Oregon before he leaves the Chamber. Might it be possible later this evening for the amendment the Senator intends to propose tomorrow to be printed in the RECORD so that we might be able to see what is included in the amendment? I will not object to any UC, and, if it is a burden, I will just take it as it is. But it would be helpful to some of us who have been waiting to see it. I do not think there will be any UC anyway.

Mr. PACKWOOD. I will tell you what I will do, Mr. President. I gave to the manager of the bill—here is what happened. I had it drafted, and it was subject to a point of order. It was in the legislative counsel's office, and I passed around the amendment as it would read, but it was in the old form.

I will put it into the RECORD but give the Senator a copy of what it was when it was subject to a point of order and assure him as it comes it will be no different.

Mr. GORE. As long as the substance of it is clear and accessible for us to look at. I thank my colleague very much.

The amendment is as follows:

On page 54, beginning with line 8, strike out all through line 21 on page 56 and insert in lieu thereof the following:

TITLE I—SHORT TITLE, FINDINGS, STATEMENT OF POLICY, AND DEFINITIONS

SEC. 101. SHORT TITLE.

This Act may be cited as the "Cable Television Competition Act of 1992".

SEC. 102. FINDINGS.

The Congress finds and declares the following:

(1) In the early 1980s, the development of the cable television industry in the United States stalled. The industry's plans to wire the Nation's largest cities were in disarray. Overdesigned and uneconomical cable systems were not attracting subscribers in sufficient numbers, largely because of inadequate programming. At the same time, important cable programming services were failing because of low ratings and low revenues. Cable faced a dilemma: It could not attract additional subscribers and increase revenues without new and innovative programming, yet it could not afford to develop such programming without additional subscribers and increased revenues.

(2) In 1984, the Congress moved to deal with this crisis in a comprehensive manner. The Cable Communications Policy Act of 1984 was designed to encourage the growth of cable systems and cable programming efforts for the benefit of consumers through the elimination of unnecessary and burdensome regulation by local franchising authorities.

(3) As the Federal Communications Commission stated in its 1990 report on the cable television industry, the Cable Communications Policy Act of 1984 has achieved much of what Congress intended. Prior to 1984, cable service was available to only 70 percent of American homes, and less than 60 percent of cable subscribers were served by systems with at least 30 channels. Today, cable service is available to 90 percent of American homes, and 90 percent of cable subscribers are served by systems with at least 30 channels. Since 1984, the cable television industry has invested over $5.1 billion in plant and equipment, and annual investment in basic cable programming has more than tripled.

(4) The cable television industry's programming efforts since deregulation have been of particular benefit to consumers. Prior to 1985, there were approximately 40 cable networks available to subscribers. Today, more than 70 cable networks are available to subscribers, and plans are being made to launch more than a dozen new networks in the near future. Through these networks, cable television offers consumers a diverse range of specialized programming options, including gavel-to-gavel coverage of the proceedings of Congress, home shopping services, music videos, 24-hour news reporting, classic movies, and documentaries. Cable television enables a consumer to pick the programming that best meets his or her individual needs and desires.

(5) The growth of the cable television industry since deregulation was fully implemented in 1986 has not been free of controversy. State and local franchising authorities and cable subscribers have complained about rate increases and poor customer service. The cable television industry's competitors have argued that the industry's financial strength, vertical integration into programming, and statutorily-mandated access to both distant and local broadcast signals have given the industry an unfair advantage in the video marketplace.

(6) Although some cable operators have clearly abused the freedom of action afforded them by the Cable Communications Policy Act of 1984, much of the current criticism of the cable television industry is misdirected.

(7) In particular, the debate over cable rates is misleading. In 1972, when the Federal Communications Commission affirmed the legality of local rate regulation, the average price of basic cable service was $5.85. At the end of 1989, it was $16.33—6 percent less than the $17.33 consumers would have paid if cable rates had simply kept up with increases in the Consumer Price Index (CPI). The substantial rate increases in excess of the CPI since full deregulation at the end of 1986 primarily reflect years of excessive local rate regulation that kept both rates and investment in better programming and additional services artificially low. Finally, the latest General Accounting Office survey of cable rates indicates that increases in the so-called "bottom line" measurement of cable rates—the average monthly subscriber bill—have moderated substantially over the past two years. In 1990, the "bottom line" increased less than the overall rate of inflation.

(8) In the words of the Federal Communications Commission, today's video marketplace is a "highly dynamic sector in the midst of transition," where relatively new technologies such as cable television and

home videotape machines have strongly challenged the formerly dominant broadcast television industry, and even newer technologies such as direct broadcast satellite service are waiting in the wings. In such a dynamic environment, it is difficult to distinguish long-term systemic problems from short-term transitory ones.

(9) The record now before the Congress does not justify massive re-regulation of cable rates, abrogation of the traditional rights of video programmers to control the use of the video programming they develop; or imposition of additional restrictions on cross-ownership, horizontal growth, and vertical integration in the cable industry. In fact, all three of these approaches have the very real potential of crippling the growth of cable programming and service options without significantly benefiting consumers. They also raise serious constitutional questions under the First Amendment.

(10) To the maximum extent, priority should be placed on encouraging competition in the video marketplace rather than re-regulating cable television.

(11) At the same time, in light of increasing importance of cable service to consumers nationwide, the Federal Communications Commission, in accordance with the universal service policy of the Communications Act of 1934, should be authorized to ensure reasonable access to cable systems—

(A) by regulating the rates charged for basic service by cable systems not subject to effective competition, and

(B) by establishing customer service and technical standards for all cable systems.

On page 56, redesignate paragraph (8) as paragraph (12) and renumber the next eleven paragraphs in the section accordingly.

On page 62, beginning with line 1, strike out all through line 9 on page 63 and insert in lieu thereof the following:

SEC. 103. STATEMENT OF POLICY.

It is the policy of the Congress in this Act to—

(1) build upon on the substantial success of the Cable Communications Policy Act of 1984 in addressing current concerns over the cable industry's conduct and trends in the video marketplace as a whole;

(2) continue, through market-oriented means, to encourage the cable industry and other video programmers and video programming distributors to provide, in an efficient and effective manner, the widest possible diversity of information sources and services to the public;

(3) further the interests of consumers by enhancing competition in the video programming market by reducing the regulatory burden on the cable industry's competitors, particularly the broadcast television industry;

(4) utilize, to the fullest extent, the expertise of the Federal Communications Commission to monitor changes in the video marketplace and determine whether administrative or legislative action, particularly action to further reduce regulation, is needed to respond to such changes; and

(5) avoid imposing additional regulation on the cable industry or any other video programmer or video programming distributor unless such regulation is clearly necessary to protect the interest of the public.

On page 63, beginning with line 10, strike out all through line 11, and insert in lieu thereof the following:

SEC. 104. DEFINITIONS.

(a) Section 602 of the Communications Act

On page 71, beginning with line 3, strike out all through line 22 on page 93 and insert in lieu thereof the following:

(l) Section 602 of the Communications Act of 1934 (47 U.S.C. 522), as amended by this section, is further amended by amending paragraph (4), as so redesignated, to read as follows:

"(4) the term 'basic cable service' means any service tier which includes retransmitted local television broadcast signals; public, educational or governmental access channels; or video programming services providing comprehensive, gavel-to-gavel coverage of the proceeding of either House of Congress;".

TITLE II—EXPANDING COMPETITION IN THE VIDEO MARKETPLACE THROUGH REDUCED REGULATION

SEC 201. ELIMINATION OF THE RESTRICTION ON MULTIPLE OWNERSHIP OF BROADCAST STATIONS.

In order to encourage the development of regional broadcast operations and networks and enhance the ability of the broadcast industry as a whole to compete with the cable television industry and other video programming distributors, the regulation adopted by the Federal Communications Commission to limit the total number of broadcast stations in any service that can be owned, operated, or controlled by a party or group of parties under common control (47 C.F.R. 73.3555(d)) is hereby repealed.

SEC. 202. EXPANSION OF THE RURAL EXEMPTION TO THE CABLE-TELEPHONE CROSS-OWNERSHIP PROHIBITON.

Section 613(b)(3) of the Communications Act of 1934 (47 U.S.C. 533(b)(3)) is amended by striking "(as defined by the Commission)" and inserting after the period the following: "For the purposes of this paragraph, the term 'rural area' means a geographic area that does not include either—

"(A) any incorporated place of 10,000 inhabitants or more, or any part thereof; or

"(B) any territory, incorporated or unincorporated, included in an urbanized area (as defined by the Bureau of the Census as of the date of the enactment of the Cable Television Competition Act of 1992).".

SEC. 203. FRANCHISE REFORM.

(A) FRANCHISE RENEWALS.—Section 626 of the Communications Act of 1934 (47 U.S.C. 546) is amended—

(1) in subsection (a), by inserting "written" before "request" and by inserting at the end of the subsection the following: "Commencement of proceedings under this section by the franchising authority on its own initiative or timely submission of a written request by the cable operator specifically asking for the commencement of such proceedings is required for the cable operator to invoke the renewal procedures set forth in subsections (a) through (g). In accordance with the provisions of subsection (j), the franchising authority may on its own initiative commence proceedings under this subsection during the 6-month period after the tenth anniversary of the current franchise term.";

(2) in subsection (b)—

(A) by inserting the following new paragraph at the beginning of the subsection:

"(1) The franchising authority shall have 1 year from the date it commences on its own initiative proceedings under subsection (a) or from the date it receives a timely written request from the cable operator specifically asking for the commencement of such proceedings to complete such proceedings. This period may be extended by mutual agreement between the franchising authority and the cable operator.";

(B) by renumbering the following paragraphs accordingly;

(C) by deleting "a proceedings" in paragraph (2), as renumbered, and inserting in lieu thereof "proceedings under subsection (a)"; and

(D) by inserting "reasonable" before "date" in paragraph (4), as renumbered;

(3) in subsection (c), by inserting "pursuant to subsection (b)" before the first comma, by deleting "completion of any proceedings under subsection (a)" and inserting in lieu thereof "date of submission of the cable operator's proposal pursuant to subsection (b)", by inserting "cable" before the third occurrence of "operator", and by inserting", throughout the franchise term" after "whether";

(4) by amending subsection (d) to read as follows:

"(d)(1) Any denial of a proposal for renewal which has been submitted in compliance with subsection (b) shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1), pursuant to the record of the proceeding under subsection (c).

"(2) A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) or on events considered under subsection (c)(1)(B) in any case in which such failure to comply or such events occur.

"(A) after the effective date of this title and before the date of enactment of the Cable Television Competition Act of 1992 unless the franchising authority has provided the cable operator with notice and the opportunity to cure, or

"(B) after the date of enactment of the Cable Television Competition Act of 1992 unless the franchising authority has provided the cable operator with written notice and the opportunity to cure.

"(3) A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) or on events considered under subsection (c)(1)(B) in any case where it is documented that the franchising authority—

"(A) has waived its right to object, or has effectively acquiesced, to such failure to comply or such events prior to the date of enactment of the Cable Television Competition Act of 1992, or

"(B) has waived in writing its right to object to such failure to comply or such events after the date of enactment of the Cable Television Competition Act of 1992."; and

(5) at the end of the section, by inserting the following new subsections:

"(i) Notwithstanding the provision of subsections (a) through (h) of this section, any lawful action to revoke a cable operator's franchise for cause shall not be negated by the initiation of renewal proceedings by the cable operator under this section.

"(j) Notwithstanding any other provision of law, a franchising authority may establish as part of any franchise or franchise renewal granted after the date of enactment of the Cable Television Competition Act of 1992, a provision permitting such franchising authority to commence the process set forth in subsections (a) through (g) of this section during the 6-month period immediately following the tenth anniversary of the current franchise term, regardles of the duration of such franchise or franchise renewal beyond such date. Nothing in this subsection shall be construed to prohibit a cable operator from seeking renewal under subsection (h).".

(b) MULTIPLE FRANCHISES.—(1) Section 621(a) of the Communications Act of 1934 (47 U.S.C. 541(a)) is amended—

(A) by striking "1 or more" in paragraph (1);

(B) by adding at the end of paragraph (1) the following: "No franchising authority shall grant an exclusive franchise to any cable operator or unreasonably refuse to award to an applicant an additional competitive franchise with terms substantially equivalent to those granted the incumbent cable operator. Any applicant whose application for an additional competitive franchise has been denied by a final decision of a franchising authority may appeal such final decision pursuant to the provisions of section 635."; and

(C) by adding at the end thereof the following new paragraph:

"(4) In awarding a franchise, the franchising authority shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the geographic area within the jurisdiction of such franchising authority.".

(2) Section 635(a) of the Communications Act of 1934 (47 U.S.C. 555(a)) is amended by inserting "621(a)(1)," immediately after "section".

(c) NO PROHIBITION AGAINST A LOCAL OR MUNICIPAL AUTHORITY OPERATING AS A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR.—Section 621 of the Communications Act of 1934 (47 U.S.C. 541) is amended by adding "and subsection (f)" before the comma in paragraph (b)(1) and by adding the following new subsection at the end thereof:

"(f) No provision of this Act shall be construed to—

"(1) prohibit a local or municipal authority that is also, or is affiliated with, a franchising authority from operating as a multichannel video programming distributor in the geographic area within the jurisdiction of such franchising authority, notwithstanding the granting of one or more franchises by such franchising authority, or

"(2) require such local or municipal authority to secure a franchise to operate as a multichannel video programming distributor.".

SEC. 304. MONITORING COMPETITION IN THE VIDEO MARKETPLACE.

(a) BIENNIAL REPORT REQUIRED.—Starting in 1993, the Federal Communications Commission shall prepare and submit to the President and Congress biennial reports regarding the level of competition in the video marketplace. Such a report shall be submitted not later than 60 days after the convening of each new Congress.

(b) CONTENT OF REPORT.—(1) Each report submitted pursuant to this section shall examine, among any other factors deemed appropriate by the Federal Communication Commission, changes in—

(A) the structure of the domestic and international video marketplace, including ownership and joint venture patterns, vertical and horizontal consolidation, and marketing and pricing approaches;

(B) the viewing and buying habits of the general public;

(C) video programming production and distribution technology; and

(D) the legislative and administrative regulatory structure that shapes the video marketplace.

(2) Each report submitted pursuant to this section shall discuss the impact of the factors set forth in paragraph (1) on the level of competition in the video marketplace and shall make specific recommendations regarding administrative and legislative steps that could be taken to reduce the regulation of, and enhance competition within, the video marketplace.

TITLE III—AMENDMENTS TO THE CABLE COMMUNICATIONS POLICY ACT OF 1984 AND OTHER MATTERS

SEC. 301. REGULATION OF CABLE RATES.

(a) Section 623 of the Communications Act of 1934 (47 U.S.C. 543) is amended to read as follows:

SEC. 623. REGULATION OF CABLE RATES.

"(a) SCOPE OF RATE REGULATION AUTHORITY.—No Federal agency or State shall regulate rates for provision of cable service or installation or rental of equipment (including remote control devices) used for the receipt of such service except to the extent provided under this section and section 612. No franchising authority shall regulate rates for provision of cable service, provision of any other communications service provided over a cable system to cable subscribers, or installation or rental of equipment (including remote control devices) used for the receipt of such services except to the extent provided under this section, section 612, and section 621.

"(b) RATE REGULATION BY THE COMMISSION.—(1) If the Commission finds that a cable system is not subject to effective competition, the Commission shall determine and prescribe just and reasonable rates for the provision on such system of basic cable service and the installation or rental of equipment (including remote control devices) used for the receipt of such service. The Commission shall further ensure that such cable system, in the provision of programming services offered on a per channel or per program basis, does not unreasonably or unjustly discriminate against subscribers who subscribe only to basic cable service or otherwise penalize such subscribers for choosing to subscribe to a regulated service tier.

"(2) Within 180 days after the date of enactment of the Cable Television Competition Act of 1992, the Commission shall promulgate procedures, standards, requirements, and guidelines to establish just and reasonable rates to be charged by a cable system not subject to effective competition for basic cable service and for the installation or rental of equipment (including remote control devices) used for the receipt of such service.

"(3)(A) Except as provided in subparagraph (B), no provision of this Act shall prevent a cable operator from adding or deleting from a basic cable service tier any video programming.

"(B) No cable operator shall delete from a basic service tier retransmitted local television broadcast signals; public, educational, or governmental access channels; or video programming services providing comprehensive, gavel-to-gavel coverage of the proceedings of either House of Congress: *Provided however,* That a cable operator may move such signals, channels, and services to a common basic service tier.

"(c) RATE REGULATION BY A FRANCHISING AUTHORITY.—(1) Within 180 days of the date of enactment of the Cable Television Competition Act of 1992, the Commission shall promulgate regulations to authorize a franchising authority, if it so chooses, to implement subsection (b)(1) in lieu of the Commission and in a manner consistent with the procedures, standards, requirements, and guidelines established pursuant to subsection (b)(2).

"(2) Upon petition by a cable operator, the Commission shall review the implementation of subsection (b)(1) by a franchising authority. If the Commission finds that such franchising authority has acted inconsistently with the procedures, standards, requirements, and guidelines established pursuant to subsection (b)(2), it shall grant appropriate relief and, if necessary, revoke such franchising authority's authorization to implement subsection (b)(1).

"(d) CONSIDERATION OF RATE INCREASE REQUESTS.—A cable operator may file with the Commission, or a franchising authority authorized to regulate rates pursuant to subsection (c), a request for a rate increase in the price of a basic cable service tier or in the price of installing or renting equipment (including remote control devices) used in the receipt of basic cable service. Any such request upon which final action is not taken within 180 days shall be deemed granted.

"(e) EFFECTIVE COMPETITION DEFINED.—For the purposes of this section, a cable system shall be considered subject to effective competition if—

"(1) one or more independently-owned multichannel video programming distributors offer service, in competition with such cable system, to at least 50 percent of the homes passed by such cable system, and

"(2) at least 10 percent of such homes subscribe to such service.

"(f) DISCRIMINATION PROHIBITED.—(1) A cable operator shall have a rate structure for the provision of cable service that is uniform throughout the geographic area covered by the franchise granted to such cable operator.

"(2) No provision of this title shall be construed to prohibit any Federal agency, State, or franchising authority from—

"(A) prohibiting discrimination among subscribers to any service tier; or

"(B) requiring and regulating the installation or rental of equipment to facilitate the reception of cable service by hearing-impaired individuals.".

SEC. 302. CUSTOMER SERVICE STANDARDS AND REQUIREMENTS.

Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended—

(1) in subsection (a), by inserting "may establish and" immediately after "authority";

(2) by amending subsection (b) to read as follows:

"(b) ENFORCEMENT POWERS OF FRANCHISING AUTHORITY.—A franchising authority may enforce—

"(1) any provision, contained in any franchise, relating to requirements described in subsection (a), to the extent not inconsistent with this title;

"(2) any customer service standard established by the Commission pursuant to subsection (d); or

"(3) any customer service requirement that exceeds the standards established by the Commission pursuant to subsection (d) but only if such requirement—

"(A) exists as part of a franchise or franchise renewal on the date of enactment of the Cable Television Competition Act of 1992; or

"(B) is imposed by—

"(i) a municipal ordinance or agreement in effect on the date of enactment of the Cable Television Competition Act of 1992, or

"(ii) a State law."; and

(3) by adding at the end the following new subsections:

"(d) ESTABLISHMENT OF CUSTOMER SERVICE STANDARDS BY THE COMMISSION.—The Commission, within one year after the date of enactment of the Cable Television Competition Act of 1992, shall, after notice and an opportunity for public comment, prescribe and make effective regulations to establish customer service standards to ensure that all cable subscribers are fairly served. Thereafter, the Commission shall regularly review the standards and make such modifications as may be necessary to ensure that cable subscribers are fairly served.

"(e) COMMISSION REVIEW OF A FRANCHISING AUTHORITY'S ENFORCEMENT OF CUSTOMER SERVICE STANDARDS AND REQUIREMENTS.—Upon petition by a cable operator, the Commission shall review the enforcement by a franchising authority of customer service standards and requirements under subsection (b). If the Commission finds that such franchising authority has acted inconsistently with the authorization granted by subsection (b), it shall grant appropriate relief.".

SEC. 303. MINIMUM TECHNICAL STANDARDS AND TESTING REQUIREMENTS.

Section 624(e) of the Communications Act of 1934 (47 U.S.C. 544(e)) is amended to read as follows:

"(e) ESTABLISHMENT AND ENFORCEMENT OF MINIMUM TECHNICAL STANDARDS BY THE COMMISSION.—(1)(A) The Commission shall, within one year after the date of enactment of the Cable Television Competition Act of 1992, prescribe and make effective regulations that establish minimum technical standards, and requirements for testing such standards, to ensure adequate signal quality for all classes of video programming signals provided over a cable system, and thereafter shall periodically update such standards and requirements to reflect improvements in technology.

"(B) The Commission shall establish guidelines and procedures for complaints or petitions asserting the failure of a cable operator to meet the standards or requirements established pursuant to this subsection and may require compliance with and enforce any such standard or requirement. The Commission shall also establish procedures and guidelines for the enforcement of such standards and requirements by a franchising authority.

"(C) The Commission, upon a determination that such action is required in the public interest, may modify or waive any standard or requirement established pursuant to this section upon petition from a cable operator or franchising authority.

"(2) Neither a State nor political subdivision thereof nor a franchising authority shall establish or enforce any technical standards or testing requirements in addition to, or different from, the standards or requirements established by the Commission.

"(3) Upon petition by a cable operator, the Commission shall review the enforcement of minimum technical standards and testing requirements by a franchising authority. If the Commission finds that such franchising authority has acted inconsistently with the procedures and guidelines established pursuant to paragraph (1)(B), it shall grant appropriate relief.".

SEC. 304. HOME WIRING.

Section 624 of the Communications Act of 1934 (17 U.S.C. 544) is amended by adding at the end the following new subsection:

"(g) Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules and regulations concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber.".

On page 93, beginning with line 23, strike out all through line 24 and insert in lieu thereof the following:

SEC. 305. RETRANSMISSION CONSENT.

(a) Section 325 of the Communications Act

On page 95, beginning with line 20, strike out all through line 21 and insert in lieu thereof the following:

SEC. 306. CARRIAGE OF LOCAL BROADCAST SIGNALS.

Part II of Title VI of the Communications

On page 111, beginning with line 22, strike out all through line 23 and insert in lieu thereof the following:

SEC. 307. JUDICIAL REVIEW.

Section 635 of the Communications Act of

On page 112, beginning on line 14, strike out all through line 26 on page 116 and insert in lieu thereof the following:

SEC. 308. DIRECT BROADCAST SATELLITE SERVICE.

(a) MR. PRESIDENT. REQUIREMENTS.—(1) The Federal Communications Commission shall require, as a condition of any provision, initial authorization, or renewal thereof, for a direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent of such capacity, exclusively for nonduplicated, noncommercial education and informational programming.

(2) Such provider may utilize for any purpose any unused channel capacity required to be reserved under this section pending the actual use of such channel capacity for nonduplicated, noncommercial educational and informational programming.

(3) Such provider shall meet the requirements of this section by leasing capacity on its system upon reasonable terms, conditions, and prices based only on the direct costs of transmitting programming supplied by national educational programming suppliers, including qualified noncommercial educational television stations, other public telecommunications entities, and public or private educational institutions. Such provider shall not exercise any editorial control over any video programming provided pursuant to the section.

(b) STUDY PANEL.—There is established a study panel which shall be comprised of one representative each from the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment, selected by the head of each such entity. Such study panel shall, within 2 years after the date of enactment of this Act, submit a report to the Congress containing recommendations on—

(1) methods and strategies for promoting the development of programming for transmission over the channels reserved pursuant to paragraph (1);

(2) methods and criteria for selecting programming for such channels that avoid conflicts of interest and the exercise of editorial control by a direct broadcast satellite service provider; and

(3) identifying existing and potential sources of funding for administrative and production costs for such programming.

(c) DEFINITION.—As used in this section, the term "direct broadcast satellite system" includes—

(1) any satellite system licensed under part 100 of title 47, Code of Federal Regulations, and

(2) any distributor using a fixed service satellite system to provide video service directly to the home and licensed under part 25 of title 47, Code of Federal Regulations.

SEC. 309. SEPARABILITY.

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application as to which it is held invalid, shall not be affected thereby.

SEC. 310. EFFECTIVE DATE.

Except as otherwise specified in this Act, the requirements of this Act shall be effective 60 days after the date of enactment of this Act. The Federal Communications Commission may promulgate such regulations as it determines as necessary to implement such requirements.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Louisiana?

Mr. PRESSLER. Mr. President, reserving the right to object, and I shall not object.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. I have two amendments to this bill that have been agreed to by both sides. If I could offer those either immediately or right after.

Mr. INOUYE. Mr. President, if I may respond.

The PRESIDING OFFICER. I believe the majority leader actually has the time.

Mr. MITCHELL. Mr. President, I yield to the Senator from Hawaii.

Mr. INOUYE. I thank the leader. We are prepared to take up the amendment immediately after this colloquy.

The PRESIDING OFFICER. The question is the unanimous-consent request of the Senator from Louisiana. If there is no objection, the request is granted.

MEASURE HELD AT DESK

Mr. JOHNSTON. Mr. President, I ask unanimous consent it be in order for me to introduce a bill, that it be held at the desk until the majority leader moves to advance it in accordance with the rules.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, the bill I send to the desk on behalf of myself and the Senator from Wyoming, Mr. WALLOP, is the same bill as S. 1220, with the exception of four sections which have been deleted. Those four sections are the so-called ANWR or Arctic national wildlife drilling section; the corporate average fuel efficiency section, the CAFE section; the WEPCO section, dealing with an exception to the Clean Air Act; and a used oil provision. Otherwise, this bill is identical to S. 1220.

Mr. President, we have not yet secured full consent from all the parties involved as to exactly how we are going to proceed, but Senator WALLOP and I send this bill up to the desk and the majority leader later will begin to invoke the provisions.

I believe it is rule XIV of the rules under which a bill may be held at the desk and advanced immediately to the calendar.

We are not asking for any extraordinary provisions other than the ability to get it on the calendar. This will neither waive the motion to take up the right to filibuster, the right to amend, or any of those kinds of things.

It is our hope, Mr. President—frankly, it is my expectation—that a comprehensive energy package as just sent

to the desk will be considered, and expeditiously so, early next week. It is my hope, Mr. President, that it will be supported on both sides of the aisle, and that we will have what constitutes a very far-reaching and very comprehensive and very effective, very balanced national energy policy.

The CAFE we hope, we trust, will not be included here, and not considered; the ANWR provisions and the other two provisions we hope will not be at all even considered as part of this package. But the rest of this bill does constitute a very extensive, balanced, effective national energy policy.

We look forward, if we get these agreements, to considering this early next week and passing it early next week.

Mr. President. I thank the majority leader. I thank my colleague from Wyoming, Senator WALLOP and all others involved in the negotiations thus far, which have been very, very successful up to this point.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

ORDER OF PROCEDURE

Mr. GRASSLEY. I ask unanimous consent to speak for 4 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

TAX BENEFITS FOR HIGHER EDUCATION

Mr. GRASSLEY. Mr. President, now that President Bush has delivered his State of the Union Address, I am sure many Members of this body will take the opportunity to comment on the President's economic plan and his vision of a new America. Several Republican Members of this body did that earlier today.

However, in the meantime, and as a member of the Senate Finance Committee, I am going to have the opportunity to make my own comments, and I am going to do that later on. But at this point, I wanted to take a few minutes to address a very specific provision of the President's plan that I have a particular interest in and have been supporting for a long time.

The specific provision I am referring to is the one to restore the interest deduction on student loans.

Mr. President, since 1987, I have sponsored legislation to restore the interest deduction on student loans. It has been a long struggle and, unfortunately, one that is not over yet. But, up to this year, I have never had the administration's support. It is extremely encouraging to finally be getting that support.

Last Friday, Senator BOREN joined me in introducing a new version of my past legislation. The new bill is an improvement on the previous legislation because it gives taxpayers a choice between a credit or a deduction and nonitemizers will be helped along with itemizers.

Earlier last December, as members of the Finance Committee, both Senator BOREN and I participated in a series of hearings regarding an economic growth package. At that time, Senator BOREN and I stressed the need to address our Nation's long-term needs by including a restoration of tax benefits for higher education in an economic growth package. We subsequently contacted President Bush emphasizing this need. It is very satisfying to see that the President listened to these concerns and agreed to include a restoration of these education benefits in his new economic plan.

Mr. President, there is just no question that more needs to be done for individual taxpayers to help them with their specific educational needs. By phasing out the interest deduction on student loans in 1986, Congress effectively imposed an additional tax on individuals who are attempting to better themselves or their families through higher education.

Mr. President, the present law precluding interest deductions or credits for higher education is neither fair nor productive, and it is time to make an adjustment. We all agree that education is a national investment which will be a determining factor in the future of America. A well-educated work force is vitally important if we are to compete effectively in the international marketplace. Restoring tax benefits for higher education is an expression of the value we place on education and its role in maintaining the position of the United States as the leader of the free world.

There is strong support for restoring these benefits in Congress. The President has now joined our effort. It is now time for the congressional leadership to get on board and join us in supporting the education and future of America by adjusting the Tax Code to provide assistance to Americans for reasonable educational expenses.

CABLE TELEVISION CONSUMER PROTECTION ACT

The Senate resumed consideration of the bill.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I have two amendments that I believe have been agreed to on both sides.

AMENDMENT NO. 1508

(Purpose: To amend section 21)

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER] proposes an amendment numbered 1508.

Mr. PRESSLER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all on page 113, line 22, through page 116, line 14, and insert in lieu thereof the following:

DIRECT BROADCAST SATELLITE SERVICES

SEC. 21.(a) The Federal Communications Commission shall, within one year after the date of enactment of this Act, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report analyzing the need for, and the form, nature, and extent of, the most appropriate public interest obligations to be imposed upon direct broadcast satellite services in addition to what is required pursuant to subsection (b)(1). The report shall include—

(1) a consideration of the national nature of direct broadcast satellite programming services;

(2) an evaluation of a phase-in of such public interest obligations for direct broadcast satellite services commensurate with the degree to which direct broadcast satellite services have become a source of effective competition to cable systems; and

(3) an analysis of the Commission's authority to impose such public interest obligations recommended in the report without further legislation.

(b)(1) Notwithstanding its report to be provided pursuant to subsection (a), The Federal Communications Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for nonduplicated, noncommercial, educational, and informational programming.

(2) A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial, educational, and informational programming.

(3) A direct broadcast satellite service provider shall meet the requirements of this subsection by leasing, to national educational programming suppliers (including qualified noncommercial educational television stations, other public telecommunications entities, and public or private educational institutions), capacity on its system upon reasonable prices, terms, and conditions, taking into account the nonprofit character of such suppliers. The direct broadcast satellite service provider shall not exercise any editorial control over any video programming provided pursuant to this subsection.

(c) There is established a study panel which shall be comprised of a representative of the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment selected by the head of each such entity. Such study panel shall within two years after the date of enactment of this Act submit a report to the Congress containing recommendations on—

(1) methods and strategies for promoting the development of programming for transmission over the public use channels reserved pursuant to subsection (b)(1);

(2) methods and criteria for selecting programming for such channels that avoids conflict of interest and the exercise of editorial control by the direct broadcast satellite service provider;

(3) identifying existing and potential sources of funding for administrative and production costs for such public use programming; and

(4) what constitute reasonable prices, terms, and conditions for provisions of satellite space for public use channels.

(d) As used in this section, the term "direct broadcast satellite service" includes—

(1) any satellite system licensed under part 100 of title 47, Code of Federal Regulations; and

(2) any distributor using a fixed service satellite system to provide video service directly to the home and licensed under part 25 of title 47, Code of Federal Regulations.

Mr. PRESSLER. Mr. President, this amendment will take America's public television stations into the 21st century. The amendment ensures that the quality programming provided by our local public broadcasters will be available to consumers via direct broadcast satellite.

The DBS provider will be required to lease to the national educational program suppliers capacities on its DBS satellite based on reasonable terms. In the future this will require that the FCC ensure 4 to 7 percent of DBS channel capacity to be made available to educational and informational programming.

Mr. President, as you know, high-powered DBS is a promising near-term competitor to cable. DBS already is available in Europe and Japan and should be coming to American viewers in early 1994 with the scheduled launch of two competing DBS services, sharing the same satellite, one provided by Hughes Communications, Inc. and the other by U.S. Satellite Broadcasting owned by Stanley Hubbard, a true visionary in the communications field. DBS will offer home viewers over 100 channels of diversified programming, including pay per view and "niche" programming, available through small, easy to install dishes which can be mounted on a window.

Consumers will be able to purchase all the electronics needed for DBS at consumer electronics stores and have the whole system operational and installed for less than $700. The small size of the receivers will enable urban Americans to receive direct satellite-to-home TV in much the same way as many Americans in my home State of South Dakota have been receiving it over the large C-band home satellite dishes. The much lower cost of DBS receivers and electronics should be attractive to people living in rural and mountainous areas who do not yet own home satellite dishes. DBS also may be the swiftest means to bring high definition television to the American viewers, again as is happening in Japan.

I have several technical amendments necessary to ensure that the procompetitive provisions of section 6 do not create unintended burdens for DBS. Several minor language changes will safeguard against DBS being inadvertently placed at a competitive disadvantage. I believe that these amendments, which I intend to offer en bloc, are acceptable to the chairmen of the committee and the subcommittee, Senators HOLLINGS and INOUYE, to the ranking minority member, Senator DANFORTH, and to Senator GORE, who has long been a leader in direct-to-home satellite broadcasting issues.

Mr. PRESSLER. I urge adoption of the amendment.

Mr. INOUYE. Mr. President, I am authorized to speak in behalf of the manager of the Republican side, Mr. DANFORTH. He and I have consulted on this matter, and we support the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1508) was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1509

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER] for himself and Mr. MCCAIN, proposes an amendment numbered 1509.

On page 79, line 21, insert before the period at the end the following: ", without any obligation or the direct broadcast satellite distributor or the programmer to pay the costs necessary for C-band distribution".

On page 80, line 14, immediately after "A", insert "fixed service".

Mr. PRESSLER. Mr. President, as many know, high-powered DBS is a promising near-term competitor to cable. DBS already is available in Europe and Japan and should be coming to American viewers in early 1994.

With a scheduled launch of two competing DBS services sharing the same satellite, one provided by Hughes Communication, Inc. and the other by U.S. Satellite Broadcasting owned by Stanley Hubbard, a true visionary in the communications field, DBS will offer home viewers over 100 channels of diversified programs including pay-per-view and niche programming available through small, easy-to-install dishes that can be mounted on a window.

Consumers will be able to purchase all the electronics needed for DBS at consumer electronic stores and have the whole system operational, installed for less than $700.

The small size of the receivers will enable urban Americans to receive direct satellite-to-home TV in much the same way as many Americans in my home State of South Dakota have been receiving it over large C-Band home satellite dishes. The much lower cost of DBS receivers and electronics should be attractive to people living in rural and mountainous areas who do not yet own home satellite dishes. DBS also may be the swiftest means to bring high-definition television to the American viewers again, as it is happening in Japan.

I have several technical amendments necessary to ensure that the procompetitive provisions of section 6 do not create an unintended burden for DBS, several minor language changes that will safeguard against DBS being inadvertently placed in a competitive disadvantage.

Mr. President, I urge adoption of the amendment.

Mr. INOUYE. Mr. President, the managers of this bill, S. 12, are in support of the amendment.

Mr. McCAIN. Mr. President, I join my colleague from South Dakota in cosponsoring this amendment which addresses the need to foster competition and a fair marketplace. Only a fair, competitive marketplace will eliminate the problems facing consumers in receiving video programming in the home.

Competition is the cornerstone of our free-market system. It is the determining factor in whether consumers will receive quality service at a fair cost. The amendment just offered will assist would-be video service providers in giving consumers all of the options available.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 1509) was agreed to.

Mr. PRESSLER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. INOUYE. Mr. President, I believe that concludes our business for this evening and, with the concurrence of the leader, we are prepared to return tomorrow morning at 10 o'clock, at which time we will consider the Packwood-Kerry, et al., substitute. We hope that we will be able to resolve all matters by the afternoon.

HONORING THE WASHINGTON REDSKINS' SUPER BOWL VICTORY

Mr. MITCHELL. Mr. President, Sunday was a great day for the people of Washington. On that day, residents of Maryland, Virginia, and even people as far away as West Virginia, all became honorary citizens of Washington, DC.

modify certain provisions relating to the treatment of forestry activities.

S. 2070

At the request of Mr. MOYNIHAN, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 2070, a bill to provide for the Management of Judicial Space and Facilities.

S. 2085

At the request of Mr. PRYOR, the name of the Senator from Idaho [Mr. SYMMS] was added as a cosponsor of S. 2085, a bill entitled the Federal-State Pesticide Regulation Partnership.

SENATE JOINT RESOLUTION 233

At the request of Mr. BIDEN, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Washington [Mr. ADAMS], the Senator from Hawaii [Mr. AKAKA], the Senator from North Dakota [Mr. BURDICK], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of Senate Joint Resolution 233, a joint resolution to designate the week beginning April 12, 1992, as "National Public Safety Telecommunicators Week."

SENATE CONCURRENT RESOLUTION 43

At the request of Mr. DODD, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of Senate Concurrent Resolution 43, a concurrent resolution concerning the emancipation of the Baha'i community of Iran.

SENATE CONCURRENT RESOLUTION 70

At the request of Mr. SANFORD, the names of the Senator from Vermont [Mr. JEFFORDS] and the Senator from Wisconsin [Mr. KOHL] were added as cosponsors of Senate Concurrent Resolution 70, a concurrent resolution to express the sense of the Congress with respect to the support of the United States for the protection of the African elephant.

SENATE RESOLUTION 109

At the request of Mr. RIEGLE, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of Senate Resolution 109, a resolution exercising the right of the Senate to change the rules of the Senate with respect to the "fast track" procedures for trade implementation bills.

SENATE RESOLUTION 248

At the request of Mr. COHEN, his name was added as a cosponsor of Senate Resolution 248, a resolution expressing the sense of the Senate regarding the signing on January 16, 1992, of the agreements for a formal cease-fire in El Salvador, and for other purposes.

At the request of Mr. DIXON, his name was added as a cosponsor of Senate Resolution 248, supra.

At the request of Mr. DURENBERGER, the names of the Senator from Virginia [Mr. WARNER], the Senator from Arizona [Mr. DECONCINI], the Senator from Florida [Mr. GRAHAM], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Wyoming [Mr. WALLOP], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Oregon [Mr. HATFIELD] were added as cosponsors of Senate Resolution 248, supra.

SENATE RESOLUTION 249

At the request of Mr. D'AMATO, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Resolution 249, a resolution expressing the sense of the Senate that the United States should seek a final and conclusive account of the whereabouts and definitive fate of Raoul Wallenberg.

SENATE RESOLUTION 252—RELATIVE TO THE STATUS OF ISRAELI PRISONERS OF WAR AND MISSING IN ACTION

Mr. D'AMATO (for himself and Mr. MOYNIHAN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 252

Whereas the Syrian Arab Republic is a party to the Geneva Convention Relative to the Treatment of Prisoners of War (hereafter in this resolution referred to as the "POW Convention");

Whereas parties to the POW Convention are obligated under Article 118 to release and repatriate POWs without delay after the cessation of hostilities and under Article 120 to honorably bury, if possible according to the rites of the religion to which they belonged, POWs who died in captivity and to respect, maintain, and permanently mark their graves;

Whereas the unresolved fates of Ron Arad, Yehuda Katz, Zachavy Baumel, Tzvi Feldman, Joseph Fink, and Rachamim Alsheh, Israeli prisoners of war and missing in action (POWs/MIAs), remain a source of deep rancor between Syria and Israel;

Whereas the Israeli POW/MIA issue, if allowed to fester, could poison the current peace talks: Now, therefore, be it

Resolved, That the Senate urges the Government of Syria—

(1) provide the strictest accounting of all Israeli POWs/MIAs;

(2) immediately release and repatriate any living Israeli prisoners of war in its custody or the custody of its proxies in Lebanon, and

(3) recover and return to Israel with appropriate military honors the bodies of Israeli soldiers interred in Syria or in formerly Syrian-controlled areas of Lebanon.

● Mr. D'AMATO. Mr. President, I rise to submit with my good friend and fellow New Yorker Senator MOYNIHAN a resolution calling upon the Government of Syria to account for, and where necessary release and repatriate, Israeli prisoners of war and missing in action.

The unresolved fates of Ron Arad, Yehuda Katz, Zachavy Baumel, Tzvi Feldman, Joseph Fink, and Rachamim Alsheh, Israeli prisoners of war and missing in action—POW's/MIA's—are a source of such deep rancor between Syria and Israel that it could poison any peace agreement between the two.

As a party to the Geneva Convention Relative to the Treatment of Prisoners of War, Syria is obligated under article 118 to release and repatriate POW's without delay after the cessation of hostilities and under article 120 to honorably bury, if possible according to the rites of the religion to which they belonged, POW's who died in captivity and to respect, maintain, and permanently mark their graves.

Americans are all too familiar with the anguish of POW's/ MIA's. Arguably, this issue more than any other has shaped United States-Vietnam relations. Such deep antagonism may mean little when two nations are separated by the Pacific and at peace, but Israel and Syria share a common border and are technically still at war.

If a permanent peace is to be achieved, Syria must abide by its international obligations and settle the mystery surrounding the fates of Ron Arad, Yehuda Katz, Zachavy Baumel, Tzvi Feldman, Joseph Fink, and Rachamim Alsheh.

I hope my colleagues will see fit to join in cosponsoring our resolution.●

SENATE RESOLUTION 253—CONGRATULATING THE WASHINGTON REDSKINS ON THEIR VICTORY IN SUPER BOWL XXVI

Mr. MITCHELL (for himself, Mr. DOLE, Mr. SARBANES, Ms. MIKULSKI, Mr. ROBB, and Mr. WARNER) submitted the following resolution; which was considered and agreed to:

S. RES. 253

Whereas the Washington Redskins were victorious in Super Bowl XXVI;

Whereas the Buffalo Bills are to be congratulated for their outstanding season and second straight Super Bowl appearance;

Whereas, Coach Joe Gibbs and his coaching staff put together an almost flawless game plan;

Whereas the Washington metropolitan area including all of Maryland and Virginia join in the pride of our local heroes; Now, therefore, be it

Resolved, That the Senate congratulates Jack Kent Cooke, Coach Joe Gibbs, and the entire Redskins organization for their outstanding season, flawless playoff record and magnificent victory in Super Bowl XXVI.

AMENDMENTS SUBMITTED

CABLE TELEVISION CONSUMER PROTECTION ACT

LOTT (AND BURNS) AMENDMENT NO. 1497

(Ordered to lie on the table.)

Mr. LOTT (for himself and Mr. BURNS) submitted an amendment intended to be proposed by him to the bill (S. 12) to amend title VI of the Communications Act of 1934 to ensure carriage on cable television of local news and other programming and to restore the right of local regulatory authorities to regulate cable television rates, and for other purposes, as follows:

At the appropriate place in the bill, insert the following:

SUBSCRIBER BILL ITEMIZATION

SEC. . Section 622(c) of the Communications Act of 1934 (47 U.S.C. 542(c)) is amended to read as follows:

"(c) Each cable operator may identify, in accordance with standards prescribed by the Commission, as a separate line item on each regular bill of each subscriber, each of the following:

"(1) The amount of the total bill assessed as a franchise fee and the identity of the franchising authority, to which the fee is paid.

"(2) The amount of the total bill assessed to satisfy any requirements imposed on the cable operator by the franchise agreement to support public, educational, or governmental channels or the use of such channels.

"(3) The amount of any other fee, tax, assessment, or charge of any kind imposed by any governmental authority on the transaction between the operator and the subscriber.".

INOUYE AMENDMENT NO. 1498

Mr. INOUYE proposed an amendment to the bill S. 12, supra, as follows:

Strike all on page 66, line 11, through page 67, line 14, and insert in lieu thereof the following:

"(20)(A) the term 'local commercial television station' means any full power television broadcast station, determined by the Commission to be a commercial station, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system (for purposes of this subparagraph, a television broadcasting station's television market shall be defined as specified in section 73.3555(d) of title 47, Code of Federal Regulations, as in effect on May 1, 1991, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include or exclude communities from such station's television market to better effectuate the purposes of this Act);

"(B) where such a television broadcast station would, with respect to a particular cable system, be considered a distant signal under section 111 of title 17, United States Code, it shall be deemed to be a local commercial television station upon agreement to reimburse the cable operator for the incremental copyright costs assessed against such operator as a result of being carried on the cable system;

"(C) the term 'local commercial television station' shall not include television translator stations and other passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

On page 68, line 3, strike "and" and insert in lieu thereof "or".

On page 86, line 24, insert "any one" immediately before "service".

On page 87, lines 3 through 4, strike "or any person having other media interests".

Strike all on page 87, line 6, through page 88, line 11, and insert in lieu thereof the following:

CUSTOMER SERVICE

SEC. 10(a) Section 632(a) of the Communications Act of 1934 (47 U.S.C. 552(a)) is amended—

(1) by inserting "may establish and" immediately after "authority";

(2) by striking ", as part of a franchise (including a franchise renewal, subject to section 626),"; and

(3) in paragraph (1), by inserting immediately after "operator" the following: "that (A) subject to the provisions of subsection (e), exceed the standards set by the Commission under this section, or (B) prior to the issuance by the Commission of rules pursuant to subsection (d)(1), exist on the date of enactment of the Cable Television Consumer Protection Act of 1991".

(b) Section 632 of the Communications Act of 1934 (47 U.S.C. 552) is amended by adding at the end the following new subsection:

"(d)(1) The Commission, within 180 days after the date of enactment of this subsection, shall, after notice and an opportunity for comment, issue rules that establish customer service standards that ensure that all customers are fairly served. Thereafter the Commission shall regularly review the standards and make such modifications as may be necessary to ensure that customers of the cable industry are fairly served. A franchising authority may enforce the standards established by the Commission.

"(2) Notwithstanding the provisions of subsection (a) and this subsection, nothing in this title shall be construed to prevent the enforcement of—

"(A) any municipal ordinance or agreement, or

"(B) any State law,

concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section.

Strike all on page 94, line 3, through page 95, line 19, and insert in lieu thereof the following:

"(b)(1) Following the date that is one year after the date of enactment of this subsection, no cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, without the express authority of the originating station, except as permitted by section 614.

"(2) The provisions of this section shall not apply to—

"(A) retransmission of the signal of a noncommercial broadcasting station;

"(B) retransmission directly to a home satellite antenna of the signal of a broadcasting station that is not owned or operated by, or affiliated with, a broadcasting network, if such signal was retransmitted by a satellite carrier on May 1, 1991;

"(C) retransmission of the signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the household receiving the signal is an unserved household; or

"(D) retransmission by a cable operator or other multichannel video programming distributor of the signal of a superstation if such signal was obtained from a satellite carrier and the originating station was a superstation on May 1, 1991.

For purposes of this paragraph, the terms 'satellite carrier', 'superstation', and 'unserved household' have the meanings given those terms, respectively, in section 119(d) of title 17, United States Code, as in effect on the date of enactment of this subsection.

"(3)(A) Within 45 days after the date of enactment of this subsection, the Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under section 614, and such other regulations as are necessary to administer the limitations contained in paragraph (2). The Commission shall consider in such proceeding the impact that the grant of retransmission consent by television stations may have on the rates for basic cable service and shall ensure that rates for basic cable service are reasonable. Such rulemaking proceeding shall be completed within six months after its commencement.

"(B) The regulations required by subparagraph (A) shall require that television stations, within one year after the date of enactment of this subsection and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 614. If there is more than one cable system which serves the same geographic area, a station's election shall apply to all such cable systems.

"(4) If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

"(5) The exercise by a television broadcast station of the right to grant retransmission consent under this subsection shall not interfere with or supersede the rights under section 614 or 615 of any station electing to assert the right to signal carriage under that section.

"(6) Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.".

Strike all on page 101, lines 5 through 7, and insert in lieu thereof the following:

"(A) any such station, if it does not deliver to the principal headend of the cable system either a signal of −45 dBm for UHF signals or −49 dBm for VHF signals at the input terminals of the signal processing equipment, shall be required to bear the costs associated with delivering a good quality signal or a baseband video signal;

Strike all on page 108, line 20, through page 109, line 5, and insert in lieu thereof the following:

"(3) The signal of a qualified local noncommercial educational television station shall be carried on the cable system channel number on which the qualified local noncommercial educational television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, at the election of the station, or on such other channel number as is mutually agreed on by the station and the cable operator. The signal of a qualified local noncommercial educational television station shall not be repositioned by a cable operator unless the operator, at least 30 days in advance of such repositioning, has provided written notice to the station and to all subscribers of the cable system. For purposes of this paragraph, repositioning includes deletion of the station from the cable system.

On page 112, lines 3 through 9, insert "or 615" immediately after "614" each place it appears.

On page 113, lines 3 through 5, strike "For purposes" and all that follows through "unreasonable.".

On page 69, line 7, strike "Rederal" and insert in lieu thereof "Federal".

On page 78, add "and" at the end of line 7.

Strike all on page 96, lines 24 through 25, and insert in lieu thereof "local commercial television station; and".

On page 96, line 7, strike "carriers" and insert in lieu thereof "carries".

GORTON (AND METZENBAUM) AMENDMENT NO. 1499

Mr. GORTON (for himself and Mr. METZENBAUM) proposed an amendment to the bill S. 12, supra, as follows:

At the appropriate place, insert the following new section:

SERVICES AND EQUIPMENT NOT AFFIRMATIVELY REQUESTED

SEC. . Section 623 of the Communications Act of 1934 (47 U.S.C. 543), as amended by section 5 of this Act, is further amended by adding at the end the following new subsection:

"(i) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.".

GORTON AMENDMENT NO. 1500

Mr. GORTON proposed an amendment to the bill S. 12, supra, as follows:

At the appropriate place, insert the following new section:

PROTECTION OF SUBSCRIBER PRIVACY

SEC. . Section 631(c)(1) of the Communications Act of 1934 (47 U.S.C. 551(c)(1)) is amended by inserting immediately before the period at the end the following: "and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator".

INOUYE AMENDMENT NO. 1501

Mr. INOUYE proposed an amendment to the bill S. 12, supra, as follows:

On page 83, between lines 20 and 21, insert the following new subsection:

(d) Section 612 of the Communications Act of 1934 (47 U.S.C. 532) is amended by adding at the end the following new subsection:

"(i)(1) Notwithstanding the provisions of subsections (b) and (c), a cable operator required by this section to designate channel capacity for commercial use may use any such channel capacity for the provision of programming from a qualified minority programming source if such source is not affiliated with the cable operator), if such programming is not already carried on the cable system. The channel capacity used to provide programming from a qualified minority programming source pursuant to this subsection may not exceed 33 percent of the channel capacity designated pursuant to this section. No programming provided over a cable system on July 1, 1990, may qualify as minority programming on that cable system under this subsection.

"(2) For purposes of this subsection—

"(A) the term 'qualified minority programming source' means a programming source which devotes significantly all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned; and

"(B) the term 'minority' includes Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders.".

BREAUX AMENDMENT NO. 1502

Mr. BREAUX proposed an amendment to the bill S. 12, supra, as follows:

On page 103, after line 24, add the following:

"(g) Nothing in this section shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program-length commercials.

GRAHAM (AND BRYAN) AMENDMENT NO. 1503

Mr. GRAHAM (for himself and Mr. BRYAN) proposed an amendment to amendment No. 1502 proposed by Mr. BREAUX to the bill S. 12, supra, as follows:

At the appropriate place, insert the following new section:

USE OF CERTAIN TELEVISION STATIONS

SEC. . Within 90 days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry to determine whether broadcast television stations whose programming consists predominantly of sales presentations are serving the public interest, convenience, and necessity. The Commission shall take into consideration the viewing of such stations, the level of competing demands for the channels allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy due to their prior programming.

LEAHY (AND GORE) AMENDMENT NO. 1504

Mr. LEAHY (for himself and Mr. GORE) proposed an amendment to the bill S. 12, supra, as follows:

On page 111, between lines 21 and 22, insert the following:

NOTICE AND OPTIONS TO CONSUMERS REGARDING CABLE EQUIPMENT

SEC. . The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by adding after section 624 the following new section:

"NOTICE AND OPTIONS TO CONSUMERS REGARDING CONSUMER ELECTRONICS EQUIPMENT.

"SEC. 624A. (a) This section may be cited as the "Cable Equipment Act of 1992'.

"(b) The Congress finds that—

"(1) the use of converter boxes to receive cable television may disable certain functions of televisions and VCRs, including, for example, the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program or another channel;

"(B) use a VCR to tape consecutive programs that appear on different channels; or

"(C) use certain special features of a television such as a 'picture-in-picture' feature; and

"(2) cable operators should, to the extent possible, employ technology that allows cable television subscribers to enjoy the full benefit of the functions available on television and VCRs.

"(c) As used in this section:

"(1) The term 'converter box' means a device that—

"(A) allows televisions that do not have adequate channel tuning capability to receive the service offered by cable operators; or

"(B) decodes signals that cable operators deliver to subscribers in scrambled form.

"(2) The term 'VCR' means a videocassette recorder.

"(d)(1) Cable operators shall not scramble or otherwise encrypt any local broadcast signal, except where authorized under paragraph (3) of this subsection to protect against the substantial theft of cable service.

"(2) Notwithstanding paragraph (1) of this subsection, there shall be no limitation on the use of scrambling or encryption technology where the use of such technology does not interfere with the functions of subscribers' televisions or VCRs.

"(3) Within 180 days after the date of enactment of this section, the Commission shall issue regulations prescribing the circumstances under which a cable operator may, if necessary to protect against the substantial theft of cable service, scramble or otherwise encrypt any local broadcast signal.

"(4) The Commission shall periodically review and, if necessary, modify the regulations issued pursuant to this subsection in light of any actions taken in response to regulations issued under subsection (i).

"(e) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations requiring a cable operator offering any channels the reception of which requires a converter box to—

"(1) notify subscribers that if their cable service is delivered through a converter box, rather than directly to the subscribers' televisions or VCRs, the subscribers may be unable to enjoy certain functions of their televisions or VCRs, including the ability to—

"(A) watch a program on one channel while simultaneously using a VCR to tape a different program on another channel;

"(B) use a VCR to tape two consecutive programs that appear on different channels; or

"(C) use certain television features such as 'picture-in-picture';

"(2) offer new and current subscribers who do not receive or wish to receive channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, by direct connection to the subscribers' televisions or VCRs, without passing through a converter box; and

"(3) offer new and current subscribers who receive, or wish to receive, channels the reception of which requires a converter box, the option of having their cable service installed, in the case of new subscribers, or reinstalled, in the case of current subscribers, in such a way that those channels the reception of which does not require a converter box are delivered to the subscribers' televisions or VCRs, without passing through a converter box.

"(f) Any charges for installing or reinstalling cable service pursuant to subsection (e) shall be subject to the provisions of Section 623(b)(1).

"(g) Within 180 days after the date of enactment of this section, the Commission shall promulgate regulations relating to the use of remote control devices that shall—

"(1) require a cable operator who offers subscribers the option of renting a remote control unit—

"(A) to notify subscribers that they may purchase a commercially available remote control device from any source that sells such devices rather than renting it from the cable operator; and

"(B) to specify the types of remote control units that are compatible with the converter box supplied by the cable operator; and

"(2) prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units.

"(h) Within 180 days after the date of enactment of this section, the Commission, in consultation with representatives of the cable industry and the consumer electronics industry, shall report to the Congress on means of assuring compatibility between televisions and VCRs and cable systems so that cable subscribers will be able to enjoy the full benefit of both the programming available on cable systems and the functions available on their televisions and VCRs.

"(i) Within 1 year after the date of enactment of this section, the Commission shall issue regulations requiring such actions as may be necessary to assure the compatibility interface described in subsection (h).".

HELMS (AND THURMOND) AMENDMENT NO. 1505

Mr. HELMS (for himself and Mr. THURMOND) proposed an amendment to amendment No. 1502 proposed by Mr. BREAUX to the bill S. 12, supra, as follows:

At the end add the following new section:

SEC. . Section 624(d) of Communications Act of 1934 (47 U.S.C. 544(d)) is amended by adding the following new paragraph:

"(3)(A) If a cable operator provides a "premium channel" without charge to cable subscribers who do not subscribe to the "premium channel(s)", the cable operators shall, not later than 60 days before such "premium channel" is provided without charge—

"(i) notify all cable subscribers that the cable operator plans to provide a "premium channel(s)" without charge, and

"(ii) notify all cable subscribers when the cable operator plans to provide a "premium channel(s)" without charge, and

"(iii) notify all cable subscribers that they have a right to request that the channel carrying the "premium channel(s)" be blocked, and

"(iv) block the channel carrying the "premium channel" upon the request of a subscriber.

"(B) For the purposes of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association as X, NR-17 or R."

DOLE AMENDMENT NO. 1506

Mr. INOUYE (for Mr. DOLE) proposed an amendment to the bill S. 12, supra, as follows:

On page 97, lines 11 through 12, strike "and accompanying audio" and insert in lieu thereof ", accompanying audio, and Line 21 closed caption".

On page 108, line 2, strike "and accompanying audio" and insert in lieu thereof ", accompanying audio, and Line 21 closed caption".

On page 63, line 21, strike "(27)" and insert in lieu thereof "(28)"; and on page 71, strike all on line 2, and insert in lieu thereof the following:

"(27) the term 'Line 21 closed caption' means a data signal which, when decoded, provides a visual depiction of information simultaneously being presented on the aural channel of a television signal; and".

SIGNING OF A CEASE-FIRE IN EL SALVADOR

DURENBERGER AMENDMENT NO. 1507

Mr. DURENBERGER proposed an amendment to the resolution (S. Res. 248) expressing the sense of the Senate regarding the signing on January 16, 1992, of the agreements for a formal cease-fire in El Salvador, and for other purposes, as follows:

On page 3, line 14, strike the words "commit itself," and insert in lieu thereof "remain committed."

On page 3, line 20, strike the words "commit itself," and insert in lieu thereof "remain committed."

On page 3, line 24, strike the words "commit itself," and insert in lieu thereof "remain committed."

CABLE TELEVISION CONSUMER PROTECTION ACT

PRESSLER AMENDMENT NO. 1508

Mr. PRESSLER proposed an amendment to the bill S. 12, supra, as follows:

Strike all on page 113, line 22, through page 116, line 14, and insert in lieu thereof the following:

DIRECT BROADCAST SATELLITE SERVICES

SEC. 21. (a) The Federal Communications Commission shall, within one year after the date of enactment of this Act, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report analyzing the need for, and the form, nature, and extent of, the most appropriate public interest obligations to be imposed upon direct broadcast satellite services in addition to what is required pursuant to subsection (b)(1). The report shall include—

(1) a consideration of the national nature of direct broadcast satellite programming services;

(2) an evaluation of a phase-in of such public interest obligations for direct broadcast satellite services commensurate with the degree to which direct broadcast satellite services have become a source of effective competition to cable systems; and

(3) an analysis of the Commission's authority to impose such public interest obligations recommended in the report without further legislation.

(b)(1) Notwithstanding its report to be provided pursuant to subsection (a), the federal Communications Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for nonduplicated, noncommercial, educational, and informational programming.

(2) A provider of such service may utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial, educational, and informational programming.

(3) A direct broadcast satellite service provider shall meet the requirements of this subsection by leasing, to national educational programming suppliers (including qualified noncommercial educational television stations, other public telecommunications entities, and public or private educational institutions), capacity on its system upon reasonable prices, terms, and conditions, taking into account the nonprofit character of such suppliers. The direct broadcast satellite service provider shall not exercise any editorial control over any video programming provided pursuant to this subsection.

(c) There is established a study panel which shall be comprised of a representative of the Corporation for Public Broadcasting, the National Telecommunications and Information Administration, and the Office of Technology Assessment selected by the head of each such entity. Such study panel shall within two years after the date of enactment of this Act submit a report to the Congress containing recommendations on—

(1) methods and strategies for promoting the development of programming for transmission over the public use channels reserved pursuant to subsection (b)(1);

(2) methods and criteria for selecting programming for such channels that avoids conflict of interest and the exercise of editorial control by the direct broadcast satellite service provider;

(3) identifying existing and potential sources of funding for administrative and production costs for such public use programming; and

(4) what constitute reasonable prices, terms, and conditions for provision of satellite space for public use channels.

(d) As used in this section, the term "direct broadcast satellite service" includes—

(1) any satellite system licensed under part 100 of title 47, Code of Federal Regulations; and

(2) any distributor using a fixed service satellite system to provide video service directly to the home and licensed under part 25 of title 47, Code of Federal Regulations.

PRESSLER (AND McCAIN) AMENDMENT NO. 1509

Mr. PRESSLER (for himself and Mr. MCCAIN) proposed an amendment to the bill S. 12, supra, as follows:

On page 79, line 21, insert before the period at the end the following: ", without any obligation on the direct broadcast satellite distributor or the programmer to pay the costs necessary for C-band distribution".

On page 80, line 14, immediately after "A", insert "fixed service".

WELFARE DEPENDENCY MEASUREMENT AND ASSESSMENT ACT

MOYNIHAN AMENDMENT NO. 1510

Mr. FORD (for Mr. MOYNIHAN) proposed an amendment to the bill (S. 1256) to direct the Secretary of Health and Human Services to develop and implement an information gathering system to permit the measurement,